STATUTORY RULES OF NORTHERN IRELAND

2003 No. 532

TRANSPORT

The Railways Regulations (Northern Ireland) 2003

Made - - - - 15th December 2003

Coming into operation 6th January 2004

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 every other power enabling it in that behalf, hereby makes the following Regulations:

PART I

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Railways Regulations (Northern Ireland) 2003 and shall come into operation on 6th January 2004.

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;

"appeal panel" means a panel appointed pursuant to regulation 12(4) for the purpose of determining appeals under paragraph (1) of that regulation;

(**1**) S.I.1999/283 (N.I. 1) Article 3(1)
(**2**) S.I. 1992/707
(**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 Area 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)

"the Council Directives" means Council Directive No.91/440/EEC of 29th July 1991 on the development of the Community's railways(**4**), Council Directive No. 95/18/EC of 19th June 1995 on the licensing of railway undertakings(**5**) and Council Directive No. 95/19/EC of 19th June 1995 on the allocation of railway infrastructure capacity and the charging of infrastructure fees(**6**);

"the Department" means the Department for Regional Development;

"EEA State" means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993(**7**);

"infrastructure fees" means the fees charged by the infrastructure manager pursuant to regulation 6(1);

"international 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 international services or international combined transport goods services as may be specified in the licence;

"stations" means any land or other property which consists of premises used as, or for the purposes of, or otherwise in connection with, a railway passenger station or railway passenger terminal (including any approaches, forecourt, cycle store or car park), whether or not the land or other property is, or the premises are, also used for other purposes.

(2) Expressions used in these Regulations and in the Council Directives have the meanings given by the Council Directives, except that the definition of "railway infrastructure" shall be taken to include stations.

(3) The Interpretation Act (Northern Ireland) 1954(**8**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Scope

3.—(1) Subject to paragraph (2) these Regulations apply to –

(a) the management of railway infrastructure and the allocation of railway infrastructure capacity in Northern Ireland;

(b) the rail transport activities in Northern Ireland of and the charging of infrastructure fees to railway undertakings established or to be established in an EEA State and international groupings which they form; and

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

(2) These Regulations do not apply to railway undertakings whose activities are limited to the operation of urban, suburban or regional services.

(**4**) 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

(**5**) O.J. No. L143, 27.6.95, p. 70. Added to Annex XIII of the EEA Agreement by Article 1 of the Decision of the EEA Joint Committee No. 71/95 of 15th December 1995 (O.J. No. L57, 7.3.96, p. 37)

(**6**) O.J. No. L143, 27.6.95, p. 75. Added to Annex XIII of the EEA Agreement by Article 1 of the Decision of the EEA Joint Committee No. 70/95 of 15th December 1995 (O.J. No. L57, 7.3.96, p. 37)

(**7**) Cm 2073 and Cm 2183

(**8**) 1954 c. 33 (N.I.)

PART II

INFRASTRUCTURE MANAGEMENT

Separation of accounts between transport operations and infrastructure management and prohibition of transfer of state aid

4. Any railway undertaking which is also the infrastructure manager shall –

(a) prepare and maintain accounts for business relating to the provision of transport services which are separate from its accounts for business relating to the management of railway infrastructure; and

(b) ensure that there is no transfer of state aid granted to the undertaking between the provision of transport services and the management of railway infrastructure.

Balancing infrastructure fees and infrastructure expenditure

5.—(1) The infrastructure manager shall ensure that, under normal business conditions over a reasonable period of time, the expenditure on railway infrastructure which he incurs does not exceed the income which he receives from infrastructure fees and State contributions.

(2) The infrastructure manager may finance the development of railway infrastructure, including the provision or renewal of capital assets, and may make a return on the capital employed in his undertaking.

Calculation of, and rules for the determination of, fees for the use of railway infrastructure

6.—(1) The infrastructure manager shall charge, and be paid, fees for the use by railway undertakings and international groupings of railway infrastructure for which they are responsible.

(2) Infrastructure fees shall be determined so as to avoid any discrimination in the charging for services of an equivalent nature in the same market.

(3) Infrastructure fees shall be determined in accordance with the rules specified in Schedule 1.

(4) The rules in Schedule 1 apply to the determination of fees on the conclusion, modification or renewal of agreements for the use of railway infrastructure.

Information to be provided by infrastructure managers

7.—(1) Whenever requested in writing to do so by the Department, the infrastructure manager shall provide such information concerning infrastructure fees as the Department shall consider necessary to decide whether or not infrastructure fees are charged on a non-discriminatory basis.

(2) The infrastructure manager shall inform in good time railway undertakings using the railway infrastructure in order to provide international services and international combined transport goods services of any major changes in the quality or capacity of the railway infrastructure concerned.

PART III

ACCESS AND TRANSIT MATTERS

Allocation bodies

8.—(1) The Department is hereby designated as the allocation body for Northern Ireland.

(2) Pursuant to paragraph (1) the Department shall procure publication of a notice in the Official Journal of the European Communities containing the following particulars –

(a) the name of the allocation body and the address to which applications for the allocation of infrastructure capacity should be sent; and

(b) the classes or descriptions of applications for access or transit rights in respect of which the allocation body is to act as such.

(3) The allocation body shall give directions to the infrastructure manager for the purpose of ensuring that railway infrastructure capacity is allocated on a fair and non-discriminatory basis.

(4) The allocation body may give directions to the infrastructure manager for the purposes of ensuring that priority in the allocation of infrastructure capacity is given to rail services that are pursuant to Council Regulation (EEC) No. 1191/69 on public service obligations in transport(**9**).

(5) Where the allocation body has given a direction which imposes a particular allocation of infrastructure capacity pursuant to paragraph (4) in the interests of public service, and which results in the infrastructure manager sustaining financial loss, it shall pay to the infrastructure manager such compensation in respect of the loss as the allocation body thinks fair and reasonable in the circumstances of the case.

(6) The allocation body may give directions to the infrastructure manager requiring the grant of access or transit rights to railway undertakings providing particular types of services or providing services in particular areas if in its opinion the grant of such rights is indispensable to secure the provision of adequate public services, the efficient use of railway infrastructure or the financing of new railway infrastructure.

Allocation of infrastructure capacity: application in Northern Ireland

9.—(1) Any international grouping may make an application –

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

(b) in the case of any other grouping for 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.

(2) Any railway undertaking established or to be established in an EEA State may make an application for the grant of such access and transit rights as may be necessary for the purpose of the operation of international combined transport goods services.

(3) Any agreement for the grant of access or transit rights to which paragraph (1) or (2) applies which is entered into otherwise than in pursuance of this Part shall be void.

(4) Any application referred to in paragraph (1) or (2) shall be in writing and shall be made to the allocation body designated pursuant to paragraph (1) of regulation 8 ("the NI allocation body") whenever the departure point of the service in question is situated in Northern Ireland.

(5) On receipt by the NI allocation body of any such application, that body shall immediately send a copy of the application to the infrastructure manager and to any relevant EEA allocation body.

(6) As soon as possible, but in any event no later than one month, after receiving all relevant information relating to such an application any relevant EEA allocation body and the infrastructure manager shall decide whether to grant or to refuse the application and shall immediately inform the NI allocation body of its decision.

(7) As soon as possible, but in any event no later than two months, after receiving all relevant information relating to such an application the NI allocation body shall, together with each relevant

(**9**) O.J. No. L156, 28.6.69, p. 1. Amended by Regulation (EEC) No. 1893/91 (O.J. No. L169, 29.6.91, p. 1)

EEA allocation body, and the infrastructure manager decide whether the application should be granted or refused and shall inform the applicant of the decision.

(8) If an application is refused, the NI allocation body shall give to the applicant the reasons for such refusal.

(9) Where an application has been refused on the grounds of insufficient capacity, the NI allocation body, any relevant EEA allocation body, and the infrastructure manager shall if the applicant so requests reconsider the application on the next occasion that the timetables for the routes concerned are adjusted.

(10) The NI allocation body shall on request furnish interested parties with details of the dates of all relevant timetable adjustments and other administrative arrangements as they may reasonably require in connection with any request or proposed request under paragraph (9).

(11) Every international grouping and every railway undertaking to which railway infrastructure capacity is allocated in accordance with these Regulations shall conclude an agreement with the infrastructure manager covering the necessary administrative, technical and financial matters to regulate traffic control and safety issues concerning the services to be provided by them.

(12) An agreement concluded pursuant to paragraph (11) shall include provision requiring the parties thereto to make such amendments thereto as the appeal panel may direct in order to give effect to any decision it makes on reference to it under regulation 12.

(13) The terms and conditions of an agreement concluded pursuant to paragraph (11) shall not be discriminatory between railway undertakings or between railway undertakings and the infrastructure manager as a provider of rail services.

(14) Within fourteen days of the conclusion of an agreement pursuant to paragraph (11) the infrastructure manager shall send a copy thereof to the NI allocation body and shall notify each relevant EEA allocation body of the conclusion of the agreement.

(15) Within twenty-one days of receiving a copy of such an agreement the NI allocation body shall procure publication of a notice in the Official Journal of the European Communities including the following particulars –

(a) the name of the applicant railway undertaking or international grouping;

(b) the name of the infrastructure manager and relevant EEA allocation body;

(c) brief particulars of the access or transit rights granted; and

(d) a statement that any railway undertaking aggrieved by the decision of the allocation body as given effect by the agreement may by notice in writing refer the matter to the appeals panel.

(16) The NI allocation body shall if so requested in writing by a railway undertaking which it reasonably considers has an interest in the matter provide to that undertaking such particulars of the agreement as that undertaking may reasonably require, including particulars as to the infrastructure fees payable under the agreement.

(17) In making information available pursuant to paragraph (16) the NI allocation body shall have regard to the need for excluding, so far as practicable, any particulars of or about the agreement which, if disclosed, would or might in the opinion of that allocation body seriously and prejudicially affect the interests of any party to the agreement.

(18) The infrastructure manager in entering into an agreement pursuant to paragraph (11) shall so operate its control and safety systems as to take account of the services operated in exercise of such rights.

(19) Nothing in this regulation shall be taken to prevent an applicant from making direct contact with any relevant EEA allocation body but, if it does so, it shall so inform the NI allocation body.

(20) In this regulation and regulations 10 and 11 –