STATUTORY RULES OF NORTHERN IRELAND

2019 No. 15

TRANSPORT

The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations (Northern Ireland) 2019

Made - - - -	*12th February 2019*
Coming into operation	*15th March 2019*

The Department for Infrastructure(**1**), being a Department designated(**2**) for the purposes of section 2(2) of the European Communities Act(**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:

Citation, extent and commencement

1.—(1) These Regulations may be cited as the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations (Northern Ireland) 2019 and shall come into operation on 15th March 2019.

Amendment of the 2016 Regulations

2. The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016(**4**) are amended in accordance with the following regulations.

Interpretation

3. In regulation 2 (interpretation)—

(a) after the definition of "the Department" insert—

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

(**1**) The Department for Regional Development was renamed the Department for Infrastructure by virtue of section 1(6) of 2016 c.5 (N.I.)
(**2**) S.I. 1999/266
(**3**) 1972 c.68
(**4**) S.R. 2016 No. 420

(b) for the definition of "the Directive" substitute—

""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)(**5**);";

(c) after the definition of "the environment" insert—

""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;";

(d) after the definition of "international grouping" insert —

""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;";

(e) after the definition of "the Office of Rail and Road" insert—

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

(f) after the definition of "public passenger transport" insert—

""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;";

(g) after the definition of "Regulation No. 913/2010" insert—

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

(h) after the definition of "service provider" insert—

""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;";

(i) after the definition of "transit rights" insert—

""upgrade" in relation to railway infrastructure, means major modification works to the infrastructure which improve its overall performance;"; and

(j) after the definition of ""urban" or "suburban"" insert—

(**5**) OJ No. L 343, 14.12.2012, p.32; as amended by Directive (EU) 2016/2370 of the European Parliament and of the Council amending Directive 2012/34/EU as regards the opening of the rail market for domestic passenger transport services by rail and the governance of the railway infrastructure (OJ No. L 352, 23.12.2016, p.1).

""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)(**6**)—

(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".

Scope

4.—(1) In regulation 3 (Scope)—

(a) for paragraph (6) substitute—

"(6) The provisions of—

(i) regulation 5;

(ii) regulation 10;

(iii) regulation 13; and

(iv) Parts 4 to 6

do not apply to the networks listed in paragraph (7);

(b) the provisions of—

(i) regulation 11;

(ii) regulation 12(1), (2) and (3); and

(iii) regulation 15(1)

also do not apply to the networks listed in paragraph (7) and do not apply to the lines described in paragraph (7A); and

(c) the provisions of—

(i) regulation 8A;

(ii) regulation 8B;

(iii) regulation 8C;

(iv) regulation 9A;

(v) regulation 14(6), (6A) and (7); and

(**6**) OJ No. L 24, 29.1.2004, p.1.

(vi) regulation 19(3) and (3A),

also do not apply to the networks listed in paragraph (7) and the lines described in paragraph (7A) and do not apply to the regional, low traffic networks described in paragraph (7B).";

(b) after paragraph (7) insert—

"(7A) The lines referred to in paragraph (6)(b) and (c) are local, low traffic lines of a length not exceeding 100km that are used for freight traffic between a mainline and points of origin and destination of shipments along those lines, provided that those lines are managed by entities other than the main infrastructure manager and that either—

(a) those lines are used by a single freight operator, or

(b) the essential functions in relation to those lines are performed by a body which is not controlled by any railway undertaking.

(7B) The regional, low traffic networks referred to in paragraph (6)(d) are regional, low traffic networks managed by an entity other than the main infrastructure manager and used for the operation of regional passenger services provided by a single railway undertaking where—

(a) capacity for passenger services on that network has not been requested, and

(b) the single railway undertaking is independent of any railway undertaking operating freight services.

(7C) The lines described in paragraph (7A) include those that are used also, to a limited extent, for passenger services and the regional, low traffic networks described in paragraph (7B) included those where the line is used also, to a limited extent, for freight services.

(7D) Where a railway undertaking is party to a public-private partnership concluded before 16th June 2015 and is responsible for providing passenger railway services on the infrastructure, the provisions of—

(a) regulation 8A;

(b) regulation 9A;

(c) regulation 14(6), (6A) and (7); and

(d) regulation 19(3) and (3A)

do not apply to the railway undertaking.".

Access rights

5. In regulation 4 (Access rights)—

(a) in paragraph (1) omit "international";

(b) in paragraph (5)—

(i) for "an international passenger service" substitute "a passenger service";

(ii) for "the international route" substitute "the route"; and

(iii) omit ", including stations located in the same Member State";

(c) omit paragraph (6);

(d) for paragraph (7) substitute—

"(7) The Office of Rail and Road may, in accordance with regulation 33, limit the rights granted by this regulation to passenger services between a place of departure and a destination where one or more public service contracts cover the same route or

an alternative route if the exercise of any such right would compromise the economic equilibrium of the public service contract or contracts in question.";

(e) omit paragraph (8); and

(f) in paragraph (10) for "or regulation 33" substitute "and regulation 33".

Infrastructure management: independence; outsourcing and sharing functions and impartiality in respect of traffic management and maintenance planning

6. After regulation 8 (management independence) insert—

"**Independence of the infrastructure manager**

8A.—(1) Subject to paragraph (5), the infrastructure manager, in its legal form, must be independent of any railway undertaking and, in vertically integrated undertakings, also be independent of any other legal entity within the undertaking.

(2) In vertically integrated undertakings, the other legal entities must not exercise any decisive influence on the decisions of the infrastructure manager in relation to the essential functions.

(3) Members of the supervisory board and the management board, and managers reporting directly to them, must act in a non-discriminatory manner and their impartiality must not be affected by any conflict of interest.

(4) The same individuals cannot be concurrently appointed or employed—

(a) as members of the management board or an infrastructure manager and as members of the management board of a railway undertaking;

(b) as persons in charge of taking decisions on the essential functions and as members of the management board of a railway undertaking;

(c) where a supervisory board exists, as members of the supervisory board of an infrastructure manager and as members of the supervisory board of a railway undertaking;

(d) as members of the supervisory board of an undertaking which is part of a vertically integrated undertaking and which exercises control over both a railway undertaking and an infrastructure manager and as members of the management board of that infrastructure manager.

(5) Paragraph (1) and sub-paragraphs (c) and (d) of paragraph (3) do not apply where infrastructure charging and path allocation functions are performed by a charging body and an allocation body by virtue of regulations 14(6) and 19(3) respectively.

(6) In vertically integrated undertakings, the members of the management board of the infrastructure manager and the persons in charge of taking decisions on the essential functions must not receive—

(a) any performance-based remuneration from any other legal entities within the vertically integrated undertaking, or

(b) any bonuses principally related to the financial performance of particular railway undertakings,

however, they may be offered incentives related to the overall performance of the railway system.

(7) Where information systems are common to different entities within a vertically integrated undertaking, access to sensitive information relating to essential functions must