
STATUTORY RULES OF NORTHERN IRELAND

2003 No. 532

The Railways Regulations (Northern Ireland) 2003

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⁽¹⁾.
- (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.

(1) 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)

(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 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 –

“EEA allocation body” means an allocation body in an EEA State other than the United Kingdom;

“NI allocation body” has the meaning given by paragraph (4); and

“relevant EEA allocation body” means an EEA allocation body which is responsible for the allocation of capacity on railway infrastructure to which the application relates.

Allocation of infrastructure capacity: application outside Northern Ireland

10.—(1) On receipt by the NI allocation body from an EEA allocation body of a copy of an application for access or transit rights made to the EEA allocation body, the NI allocation body shall immediately send a copy of the application to the infrastructure manager.

(2) As soon as possible but in any event no later than three weeks after receiving all relevant information relating to the application, the NI allocation body and the infrastructure manager shall decide whether to grant or to refuse the application for access or transit rights on the Northern Ireland railway network.

(3) As soon as possible but in any event no later than one week after reaching that decision, the NI allocation body shall inform the EEA allocation body of the decision.

(4) If an application for infrastructure capacity is refused, the NI allocation body shall give to the EEA allocation body the reasons for such refusal, and if such an application is granted the allocation body shall provide the following particulars –

- (a) the name of the applicant, railway undertaking or international grouping;
- (b) the name of the relevant EEA allocation body; and
- (c) brief particulars of the access or transit rights granted.

(5) Paragraphs (9) to (18) and (20) of regulation 9 shall have effect in relation to applications to which this regulation applies with the following modifications –

- (a) subject to sub-paragraph (c) references to any relevant EEA allocation body shall be disregarded;
- (b) in paragraph (9) the reference to the applicant shall be read as a reference to the EEA allocation body acting at the request of the applicant; and

- (c) in paragraph (14) the reference to each relevant EEA allocation body shall be read as a reference to the EEA allocation body.

Safety certificates

11.—(1) No railway undertaking or international grouping may exercise access or transit rights contained in an agreement with the infrastructure manager concluded pursuant to regulation 9 or 10 unless the undertaking or grouping has produced to the infrastructure manager a safety certificate.

(2) For the purposes of paragraph (1) a safety certificate is any document issued by the Department confirming that the railway undertaking or international grouping satisfies the safety standards required to operate on the Northern Ireland railway network.

Appeals in respect of allocation of infrastructure capacity or the charging of fees

12.—(1) A railway undertaking aggrieved by a decision of the NI allocation body under regulation 9 or 10 for the allocation of railway infrastructure capacity or the charging of infrastructure fees may appeal against that decision.

(2) In the case of a decision to refuse an application, such notice shall be given by the applicant within twenty-one days of being informed of the decision.

(3) In the case of a decision to grant an application, such notice shall be given within two months of the publication of the particulars of any agreement made pursuant to the decision in the Official Journal of the European Communities in accordance with paragraph (15) of regulation 9 (including that paragraph as applied by paragraph (5) of regulation 10).

(4) On receiving a notice of appeal under paragraph (2), the NI allocation body shall refer the appeal to a panel consisting of three members of whom –

- (a) two shall be members with suitable experience nominated one each by the NI allocation body and the appellant;
- (b) one shall be a Senior Counsel nominated by the two members referred to in subparagraph (a).

(5) Any railway undertaking that refers a decision to the appeal panel under paragraph (1) shall at the same time provide a statement of the reasons why it is aggrieved by the decision.

(6) The appeal panel shall, within seven days of receiving such a notice and a statement of reasons, send a copy thereof to the NI allocation body, the infrastructure manager and the international grouping or railway undertaking concerned.

(7) Any person notified under paragraph (6) may, within twenty-one days of receiving such a copy, make such representations as he considers appropriate to the appeal panel concerning the decision to which the notice relates and the statement of reasons.

(8) The appeal panel shall reach a determination on a reference made under this regulation within two months of the date of receiving all relevant information (including any information provided pursuant to paragraph (13)) to enable it to determine the reference.

(9) On disposing of a reference under this regulation the appeal panel may decide that the allocation body's decision should stand, be reversed or be modified.

(10) Where the decision of the appeal panel requires the modification of any agreement made pursuant to the allocation body's decision or the grant of rights where an application has been refused it may give such directions as it thinks fit for that purpose and the infrastructure manager and railway undertaking concerned shall be under a duty to comply with and give effect to any such directions.

(11) The appeal panel shall not make a decision requiring the grant of rights by the infrastructure manager or the modification of rights granted by the infrastructure manager unless it is satisfied that the grant would not involve the breach by the infrastructure manager of the duty imposed

by paragraph (3) of regulation 8 or of any direction given by the NI allocation body pursuant to paragraph (4) of that regulation.

(12) If on a reference to the appeal panel under the preceding provisions of this regulation a question arises as to any matter which may, in the opinion of the appeal panel, have safety implications, the appeal panel shall refer the question to the Health and Safety Executive for Northern Ireland whose opinion on the question shall be taken into account by the appeal panel.

(13) It shall be the duty of any railway undertaking, the infrastructure manager and the allocation body to provide the appeal panel with such information as may reasonably be required for the purpose of determining a reference to it under this regulation.