

2003 No. 532

TRANSPORT

The Railways Regulations (Northern Ireland) 2003

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The Department for Regional Development(a), being a Department designated(b) for the purposes of section 2(2) of the European Communities Act 1972(c) 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;

“the Council Directives” means Council Directive No. 91/440/EEC of 29th July 1991 on the development of the Community’s railways(d), Council Directive No. 95/18/EC of 19th June 1995 on the licensing of railway undertakings(e) and Council Directive No. 95/19/EC of 19th June 1995 on the allocation of railway infrastructure capacity and the charging of infrastructure fees(f);

(a) S.I. 1999/283 (N.I. 1) Article 3(1)

(b) S.I. 1992/707

(c) 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)

(d) 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

(e) 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)

(f) 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)

“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(a);

“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(b) 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.

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.

(a) Cm 2073 and Cm 2183
(b) 1954 c. 33 (N.I.)

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(a).

(a) 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)

(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 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 sub-paragraph (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.

PART IV INTERNATIONAL LICENCES

Prohibition of unlicensed provision of international services

13.—(1) No person may provide international services in Northern Ireland or international combined transport goods services in Northern Ireland unless he is authorised to do so by an international licence, and any person who provides such services without such a licence shall be guilty of an offence.

(2) Any person who is guilty of an offence under this regulation shall be liable –

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(3) No proceedings shall be instituted in Northern Ireland in respect of an offence under this regulation except by or on behalf of the Department.

(4) In this regulation the expression “international licence” includes a licence granted pursuant to any action taken by an EEA State for the purpose of implementing Council Directive No. 95/18/EC.

Appointment of licensing authority and grant of international licences

14.—(1) The Department is hereby designated as the body responsible for granting international licences.

(2) Subject to and in accordance with these Regulations, the Department shall, on an application in writing made to it by a railway undertaking established in Northern Ireland in such form and manner as it may from time to time determine, grant to that railway undertaking an international licence.

(3) An international licence may authorise the provision of services generally or be restricted to particular types of service specified in the licence.

(4) Before granting or modifying an international licence the Department shall consult the Health and Safety Executive for Northern Ireland.

(5) An applicant shall submit with his application the information about the applicant referred to in Schedule 2 and at any time after submitting the application such further information as the Department may reasonably require in connection with the application.

(6) The applicant shall at the same time as he submits any information about his professional competence to the Department send to the Health and Safety Executive for Northern Ireland a copy of that information.

(7) The Department shall grant an international licence if, and only if, satisfied that the applicant will be able at any time to satisfy the requirements referred to in Schedule 2 as to good repute, financial fitness, professional competence and cover for liabilities to third parties.

(8) An application for an international licence shall be determined by the Department as soon as possible and in any event within three months of receipt of the information referred to in paragraph (5).

(9) In respect of each application for an international licence the Department shall publish at least once in the Official Journal of the European Communities, the Belfast Gazette, and in one or more newspapers whose circulation together covers the whole of Northern Ireland a notice including the following particulars: –

- (a) a statement that the applicant has made an application for an international licence and the principal address of the Department;
- (b) the name of the applicant and the address of its registered or principal office; and
- (c) a summary of the activities which the applicant wishes to carry out pursuant to the international licence.

(10) The Department shall inform the applicant in writing of its decision and, where the Department refuses to grant an international licence, the refusal shall state the reasons for its decision.

(11) As soon as practicable after granting an international licence the Department shall send a copy of the licence to the Health and Safety Executive for Northern Ireland.

Modification of international licences

15.—(1) The Department may modify an international licence if the holder of the licence consents to the modification.

(2) Before modifying an international licence the Department shall consult the Health and Safety Executive for Northern Ireland.

(3) As soon as practical after modifying an international licence the Department shall send a copy to the Health and Safety Executive for Northern Ireland.

Validity of international licences

16. An international licence shall, unless previously revoked or surrendered in accordance with any provision in these Regulations or the licence, continue in force for as long as the railway undertaking concerned complies with the requirements of these Regulations and any conditions included in the licence.

Monitoring, suspension and revocation of international licences

17.—(1) If at any time the Department considers that there is serious doubt whether a railway undertaking to which an international licence has been granted complies with a requirement of these Regulations or a condition included in the licence, the Department may take such steps as are necessary to enable it to determine whether or not the undertaking does so comply.

(2) Where the serious doubt of the Department relates wholly or partly to the requirement of professional competence such steps shall include consulting the Health and Safety Executive for Northern Ireland.

(3) If, having taken the steps referred to in paragraph (1), the Department is satisfied that a railway undertaking to which an international licence has been granted does not comply with

any such requirement, the Department shall revoke the licence or suspend it for such period as the Department thinks fit.

(4) The Department shall revoke an international licence if proceedings have been commenced for the winding up of a railway undertaking to which an international licence has been granted on the grounds that the undertaking is unable to pay its debts and it is satisfied that there is no reasonable prospect of satisfactory financial restructuring of the undertaking within a reasonable period of time.

(5) Where the Department is satisfied that there is serious doubt whether a railway undertaking to which an international licence has been granted by a licensing authority other than by the Department complies with any requirement of Council Directive No. 95/18/EC the Department shall without delay so notify that licensing authority.

(6) Where the Department has suspended or revoked an international licence solely on the grounds of the non-compliance by the railway undertaking with the requirements of financial fitness specified in Schedule 2, but considers that there is a realistic prospect of a satisfactory financial restructuring of the undertaking taking place within a reasonable period of time, it may grant to the undertaking a temporary international licence pending such financial restructuring.

(7) A temporary international licence granted under paragraph (6) shall not be granted where the Department after consultation with the Health and Safety Executive for Northern Ireland considers that safety would be jeopardised.

(8) A temporary international licence granted under paragraph (6) shall not be granted for a period exceeding six months.

(9) Where a railway undertaking to which an international licence has been granted has either ceased the operations to which the licence relates or has not commenced such operations within six months of the date of such grant then the Department may either require the railway undertaking to resubmit its licence for approval or suspend the licence.

(10) Where the Department has required a railway undertaking to resubmit its international licence in pursuance of paragraph (9) on the grounds that the railway undertaking has not commenced such operations the railway undertaking shall be entitled to request that a period longer than the six months be granted in which it can commence operations. In considering such a request the Department shall take account of the specific nature of the services to be provided by the railway undertaking under the international licence.

(11) In the event of a change to a railway undertaking's legal situation, in particular following a change in the control or ownership of the railway undertaking as a result of a merger with or take-over by another undertaking, the Department may require the railway undertaking to resubmit its licence to it for review. The railway undertaking may continue operations while its licence is under review unless the Department is satisfied after consultation with the Health and Safety Executive for Northern Ireland that safety is jeopardised by the change and so notifies the undertaking.

(12) When a railway undertaking intends significantly to change or extend its activities from those in respect of which a licence was granted to it, the railway undertaking shall resubmit its licence to the Department for review.

(13) When the Department suspends, revokes or amends an international licence in accordance with this regulation the Department shall forthwith inform the Commission of such amendment, revocation or suspension.

Conditions of international licences

18. An international licence shall include conditions requiring the licence holder to satisfy requirements as to the good repute, financial fitness, professional competence and cover for liabilities to third parties of the licence holder, including those requirements specified in Schedule 2, and may include conditions –

- (a) requiring the licence holder to submit to a review of its licence at least every five years during the currency of the licence;
- (b) concerning the suspension or revocation of the licence.

PART V

MISCELLANEOUS

Statutory authority to run trains

19. Any international grouping or railway undertaking granted access or transit rights under these Regulations shall, if and to the extent that it would not, apart from this regulation, have statutory authority to run trains over any track in exercise of such rights, be taken to have statutory authority to do so.

International groupings and railway undertakings granted access or transit rights not to be common carriers

20. International groupings and railway undertakings granted access or transit rights under these Regulations shall not in relation to the provision of international services in exercise of those rights be regarded as common carriers by railway.

International groupings

21. In the event of a contravention of, or a refusal or failure to comply with, a requirement or prohibition imposed by these Regulations on an international grouping –

- (a) where the contravention, or refusal or failure to comply would be an offence under these Regulations or under the Health and Safety at Work (Northern Ireland) Order 1978(a) each railway undertaking comprised in the grouping shall be guilty of the offence and liable to be proceeded against and punished accordingly; and
- (b) where a civil remedy would be available to any person in respect of any loss, damage or injury caused by the contravention, or refusal or failure to comply, each railway undertaking comprised in the grouping shall be jointly and severally liable in respect of such loss, damage or injury.

Civil proceedings

22.—(1) The obligation to comply with regulation 4, paragraph (1) of regulation 5, paragraph (2) of regulation 6, paragraph (2) of regulation 7, paragraph (3) of regulation 8, paragraphs (11) and (13) of regulation 9 (including those paragraphs as applied by paragraph (5) of regulation 10), a decision under paragraph (9) or direction under paragraph (10) of regulation 12, or the rules specified in Schedule 1 shall be a duty owed to any person who may be affected by a breach of that duty and shall be actionable by any such person who sustains loss, damage or injury caused by the breach at the suit or instance of that person.

(2) In any proceedings brought against the NI allocation body, infrastructure manager, international grouping or railway undertaking in pursuance of paragraph (1), it shall be defence for it to prove that it took all reasonable steps and exercised all due diligence to avoid the breach of duty.

(3) Subject to paragraph (4), without prejudice to the right that any person may have by virtue of paragraph (1) to bring civil proceedings in respect of any breach of duty, the obligation to comply shall be enforceable by civil proceedings by the Department for an injunction or any other relief.

(4) Paragraph (3) does not apply to any breach of duty arising out of the obligation to comply with paragraph (3) of regulation 8.

Making of false statements etc.

23.—(1) If any person, in giving any information or making any application under or for the purposes of any provision of these Regulations, makes any statement which he knows to be false in a material particular, he is guilty of an offence and shall be liable –

(a) S.I. 1978/1039 (N.I. 9)

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(2) No proceedings shall be instituted in Northern Ireland in respect of an offence under this regulation except by or with the consent of the Department or the Director of Public Prosecutions.

Offences by bodies corporate

24.—(1) Where an offence under these Regulations has been committed by a body corporate and it is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Offences outside the United Kingdom

25.—(1) For the purpose of determining whether a breach of the duty imposed by regulation 4 has occurred, it is immaterial that the relevant acts or omissions occurred outside the United Kingdom if, when they occurred, the person –

- (a) was a United Kingdom national, or
- (b) was a body incorporated under the law of any part of the United Kingdom, or
- (c) was a person (other than a United Kingdom national or such a body) maintaining a place of business in the United Kingdom.

(2) In this regulation “United Kingdom national” means an individual who is –

- (a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen;
- (b) a person who under the British Nationality Act 1981^(a) is a British subject, or
- (c) a British protected person (within the meaning of that Act).

Sealed with the Official Seal of the Department for Regional Development on 15th December 2003.

(L.S.)

R. E. Aiken

A senior officer of the Department for Regional Development

(a) 1981 c. 61

SCHEDULE 1

Regulation 6(4)

ACCESS FEES

1. Subject to rules 2 to 5, a fee for the use of infrastructure shall include, and shall include only: –
 - (a) an amount equal to the estimated costs reasonably attributable to the operation of trains in pursuance of the agreement under which the fee is payable; and
 - (b) an amount determined in accordance with rule 2 in respect of a share of estimated common costs.
2. The amount referred to in rule 1(b) shall be such amount as may be determined by agreement between the infrastructure manager and the person by whom the fee is payable or a person acting on his behalf.
3. In determining a fee, account shall be taken of the nature of the service, the time of the service, the market situation and the type and degree of wear and tear of the infrastructure.
4. A fee may be increased or decreased by an amount determined by agreement between the infrastructure manager and the person by whom the fee is payable or a person acting on his behalf to take account of special or exclusive rights to use the infrastructure granted to the person by whom the fee is payable or to any other person.
5. A fee may be increased or decreased, in accordance with any performance incentive regime agreed between the infrastructure manager and the person by whom the fee is payable or a person acting on his behalf, by an amount so determined.

6. In this Schedule –

“common costs” means the costs incurred by the infrastructure manager in operating his railway infrastructure which are not attributable to the operation of trains on that infrastructure by any particular railway undertaking or international grouping;

“costs” include the cost of operating the control and safety systems, or providing or renewing capital assets, of a rate of return on capital invested in the infrastructure, of the payment of value added tax and administrative costs and other overheads; and

“infrastructure” means railway infrastructure.

SCHEDULE 2

Regulation 14

QUALIFICATIONS FOR INTERNATIONAL LICENCE

Good Repute

1. In determining whether a railway undertaking is of good repute the Department shall have regard to all relevant evidence, including any information in its possession as to the previous conduct of any appropriate officer of the undertaking if that conduct appears to him to relate to the undertaking’s fitness to hold an international licence.
2. Without prejudice to the generality of its powers under paragraph 1, the Department shall not determine that a railway undertaking is of good repute if –
 - (a) an order has been made by the court for the winding up of the undertaking under insolvency legislation or any director for the time being of the undertaking has been adjudged bankrupt under that legislation or the undertaking or any such director has made a compromise with its or his creditors;
 - (b) the undertaking or any appropriate officer of the undertaking has been convicted of a serious offence, including in particular an offence contrary to the law relating to commercial transactions, the law relating to transport, or social and labour law (including legislation relating to occupational health and safety); or
 - (c) the undertaking or any appropriate officer of the undertaking has been convicted repeatedly of offences contrary to social or labour law not falling within sub-paragraph (b).
- 3.—(1) For the purpose of paragraph 2 a person has been convicted of a serious offence if that offence was committed under the law of any part of the United Kingdom or under the law of a country or territory

outside the United Kingdom and if on conviction there was imposed on him for that offence a punishment falling within sub-paragraph (2).

(2) The punishments are –

- (a) a sentence of imprisonment for a term exceeding three months;
- (b) a fine exceeding level 4 on the standard scale;
- (c) a community service order requiring him to perform work for more than 60 hours; and
- (d) in the case of an offence committed under the law of a country or territory outside the United Kingdom, any punishment corresponding to those mentioned in paragraphs (a) to (c).

(3) In sub-paragraph (2) –

- (a) the reference to a sentence of imprisonment includes a reference to any form of custodial sentence or order, other than one imposed under the enactments relating to mental health; and
- (b) “community service order” means an order under Article 13 of the Criminal Justice (Northern Ireland) Order 1996(a).

4.—(1) Any reference in paragraph 3 to an offence under the law of any part of the United Kingdom includes a reference to a civil offence (wherever committed) within the meaning of the Army Act 1955(b), the Air Force Act 1955(c) or as the case may be the Naval Discipline Act 1957(d).

(2) For the purposes of paragraphs 1 to 4 –

- (a) convictions which are spent for the purposes of the Rehabilitation of Offenders (Northern Ireland) Order 1978(e) shall be disregarded; and
- (b) the Department may also disregard an offence if such time as it thinks proper has elapsed since the date of the conviction.

5. In paragraphs 1 and 2 the reference to any appropriate officer of the undertaking is to any director, manager, secretary, or other similar officer of the undertaking or any person purporting to act in any such capacity.

Financial Fitness

6. Subject to paragraph 8 an applicant for an international licence shall be considered to meet the required standard of financial fitness when it can demonstrate that it will be able to meet its actual and potential obligations, established under realistic assumptions, for a period of twelve months from the date of application for a licence.

7. For the purpose of demonstrating its financial fitness a railway undertaking shall make available to the Department the undertaking’s annual accounts, or if the undertaking is not able to provide annual accounts then the undertaking’s balance sheet, together with details of the following matters (insofar as these cannot be ascertained from the annual accounts or, as the case may be, the balance sheet) –

- (a) the railway undertaking’s available funds, including the bank balance, pledged overdraft provisions and loans;
- (b) the railway undertaking’s funds and assets available as security;
- (c) the railway undertaking’s working capital;
- (d) relevant costs, including the railway undertaking’s purchase costs of payments to account for vehicles, land, buildings, installations and rolling stock; and
- (e) charges on the railway undertaking’s assets; and
- (f) such other information concerning the financial fitness of the railway undertaking as the Department may reasonably request.

8. The Department shall not find the railway undertaking to be financially fit if the railway undertaking has substantial arrears of taxes or social security payments which are owed as a result of the undertaking’s activity.

9. Without prejudice to paragraph 7(f), the Department may request that the railway undertaking provide audit reports or other suitable documents as the Department considers necessary in relation to the matters listed in paragraph 7(a) – (e) which have been prepared by a body other than the railway undertaking such as a bank, building society, accountant or auditor.

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- (a) S.I. 1996/3160 (N.I. 24)
 - (b) 1955 c. 18
 - (c) 1955 c. 19
 - (d) 1957 c. 53
 - (e) S.I. 1978/1908 (N.I. 27)

Professional Competence

10. For the purposes of these Regulations the requirements of professional competence are satisfied by a railway undertaking when: –

- (a) the undertaking has or will have a management organisation which possesses the knowledge and experience necessary to exercise safe and reliable operational control and supervision of the type of operations specified in the licence;
- (b) its personnel responsible for safety, in particular the drivers of the rolling stock, are fully qualified for their field of activity; and
- (c) its personnel, rolling stock and organisation can ensure a high level of safety for the services to be provided.

11. A railway undertaking shall provide to the Department such information as he may reasonably be required to enable the Department to determine, after consultation with the Health and Safety Executive for Northern Ireland, whether the requirements in paragraph 10 have been satisfied.

12. The information referred to in paragraph 11 shall in all cases include –

- (a) particulars of the nature and maintenance of rolling stock, in particular as regards safety standards; and
- (b) particulars of the qualifications of personnel responsible for safety and details of personal training including appropriate written proof of compliance with qualification requirements.

Insurance Cover

13.—(1) An applicant for an international licence shall be considered to meet the requirement of insurance cover where in accordance with the law of the United Kingdom and any relevant international law the undertaking maintains adequate insurance cover, or has made arrangements having equivalent effect, covering its liabilities in the event of accident to passengers, luggage, freight, mail and third parties.

(2) In sub-paragraph (1) “international law” means any provisions contained in any international agreement or arrangement to which the United Kingdom is a party and which have the force of law in the United Kingdom.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations implement Council Directive 91/440/EEC of 29th July 1991 (O.J. No. L237, 24.8.91, p. 25) on the development of the Community's railways and Council Directives 95/18/EC and 95/19/EC of 19th June 1995 on the licensing of railway undertakings and on the allocation of railway infrastructure capacity and the charging of infrastructure fees (O.J. No. L143/75, 27.6.95, p. 70-75).

The Regulations require any railway undertaking which is also an infrastructure manager to prepare and maintain accounts separately for the provision of transport services and infrastructure management (regulation 4), and require the infrastructure manager to ensure that the expenditure on railway infrastructure he incurs does not exceed the income he receives from infrastructure fees (regulation 5). They lay down requirements as to the fees to be charged by the infrastructure manager for the use of railway undertakings who will in return provide the Department with such information as it needs to determine whether fees are charged on a non-discriminatory basis (regulations 6 and 7 and Schedule 1).

The Department is designated as the allocation body for Northern Ireland responsible for handling applications for railway infrastructure capacity (regulation 8). Detailed procedures for the handling of applications for infrastructure capacity are specified in regulation 9 where the application is made to the allocation body for Northern Ireland, and in regulation 10 where the application is made elsewhere in the European Union. Access or transit rights will only be granted subject to an agreement being entered into with the infrastructure manager (regulation 9(11)) which will include the applicant providing a safety certificate issued by the Department as specified in regulation 11. Railway undertakings aggrieved by a decision of an allocation body may appeal against that decision (regulation 12).

The unlicensed provision of international services is made a criminal offence (regulation 13). The Department is appointed as the authority to issue international licences (regulation 14). Applicants for such licences must satisfy requirements as to good repute, professional competence, financial fitness and third party liabilities (regulation 14 and Schedule 2). Such licences are valid for as long as the licence holder complies with these Regulations and any licence conditions (regulation 16). The Department is empowered to monitor and suspend or revoke such licences in certain circumstances (regulation 17).

International groupings and railways undertakings are given statutory authority in respect of the provision of international services in exercise of rights granted under the regulations (regulation 19). Such groupings and undertakings are not to be common carriers in respect of the provision of such services (regulation 20).

Any person affected by a refusal or failure to comply with obligations arising under the regulations referred to in regulation 22, and who suffers loss or damage caused by the refusal or failure, may bring a civil action, and the Department may seek to enforce compliance by civil proceedings for an injunction (regulation 22). It is an offence knowingly to provide false information under or for the purpose of the Regulations (regulation 23).

Copies of the above noted Directives may be obtained from TSO, 16 Arthur Street, Belfast BT1 4GN.

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