
STATUTORY RULES OF NORTHERN IRELAND

2005 No. 537

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

PART VI

REGULATION AND APPEALS

Regulatory body

26.—(1) The Department is designated as the regulatory body for the purposes of these Regulations.

(2) The Department must ensure that charges for the use of railway infrastructure imposed by the infrastructure manager comply with the requirements of Part 4 and Schedule 2.

(3) Negotiations between an applicant and the infrastructure manager about the level of infrastructure charges shall only be permitted if these are carried out under the supervision of the Department and, if such negotiations are likely to contravene the requirements of these Regulations, it shall be the duty of the Department to intervene.

(4) The Department must exchange information about its—

- (a) work;
- (b) decision making principles; and
- (c) practice

with other national regulatory bodies for the purpose of co-ordinating decision making principles across the Community.

(5) Where the Department by virtue of regulations 18(7)(b), or 28(2), prescribes the manner and form of any notification, appeal or complaint to be lodged in accordance with those regulations, the Department must make that prescription and details of such manner and form publicly available.

Appeals to the regulatory body

27.—(1) An applicant has the right of appeal to the Department if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved and, in particular, against decisions adopted by the infrastructure manager or as the case may be, a railway undertaking or any interested party, in respect of any of the matters described in paragraph (2).

(2) Those matters are—

- (a) the network statement produced in accordance with regulation 10;
- (b) the information which, by virtue of regulation 10(4), must be included in that network statement;
- (c) the allocation process and its result as prescribed in Part 5 and Schedule 3;

- (d) the charging scheme and charging system established in accordance with regulation 11;
 - (e) the level of structure of infrastructure fees, the principles of which are prescribed in Part 4 and Schedule 2, which it is, or may be, required to pay; and
 - (f) the arrangements in connection with the entitlements to access granted under Part 2 and Schedule 1.
- (3) The applicant must lodge the appeal by way of an application under this regulation, in such form and manner as the Department may from time to time prescribe.
- (4) When considering an appeal in respect of the circumstances described in paragraph (5), the Department is under a duty to determine whether, in respect of the access to which the appeal relates, viable alternatives under market conditions exist.
- (5) Those circumstances are when the appeal contests that viable alternative means of the service being provided under market conditions do not exist so as to justify the refusal of a request for the supply of services under regulation 5(4).
- (6) The Department must, within two months of the date of receipt of all relevant information—
- (a) make a decision on; and
 - (b) where appropriate, issue a direction to the infrastructure manager, or, as the case may be, a railway undertaking or any interested party, to remedy the situation arising out of,
- an appeal brought under this regulation.
- (7) In making a decision on an appeal brought under this regulation against refusal by the infrastructure manager to allocate infrastructure capacity, or against the terms of an offer of infrastructure capacity, the Department must either—
- (a) confirm that no modification of the infrastructure manager or allocation body's decision is required; or
 - (b) require modification of that decision in accordance with directions issued by the Department.
- (8) Without prejudice to the right of any person to make an application to the court under Order 53 of the Rules of the Supreme Court (Northern Ireland) 1980(1).
- (a) a decision by the Department on an appeal brought under this regulation is binding on all parties affected by that decision; and
 - (b) it is the duty of any person to whom a direction is given under this regulation to comply with and give effect to that direction.

Competition in the rail services market

- 28.**—(1) The Department shall be responsible for—
- (a) monitoring; and
 - (b) determining complaints lodged under paragraph (2) relating to,
- competition in the rail services markets, including the rail freight transport market.
- (2) Any applicant or interested party may submit a complaint to the Department, in such form and manner as the Department may from time to time prescribe, if it believes that it has been treated unjustly, been the subject of discrimination or has been injured in any other way.
- (3) Subject to paragraph (4) where, following receipt of—
- (a) complaints lodged under paragraph (2); or
 - (b) information gathered on its own initiative,

the Department identifies undesirable developments in relation to competition in the rail services markets it must, at the earliest possible opportunity, determine measures and take appropriate action to correct those developments.

(4) Paragraph (3) is without prejudice to the rights of any person to make an application to the court under Order 53 of the Rules of the Supreme Court (Northern Ireland) 1980.

Provision of information to the regulatory body

29. It shall be the duty of the infrastructure manager, applicant, service provider or any other party to furnish to the Department in such form and manner as it may by notice request, within such period as is specified in the notice, such information specified in the notice as the Department considers necessary for the purpose of facilitating the performance of its functions under regulations 9, 27 or 28.