
STATUTORY RULES OF NORTHERN IRELAND

2016 No. 420

**The Railways Infrastructure (Access, Management
and Licensing of Railway Undertakings)
Regulations (Northern Ireland) 2016**

PART 2

ACCESS TO RAILWAY INFRASTRUCTURE AND SERVICES

Access and transit rights

4.—(1) A railway undertaking is entitled, on equitable, non-discriminatory and transparent conditions, access rights to such railway infrastructure as may be necessary for the purpose of operating all types of rail freight or international passenger services.

(2) An international grouping which includes a railway undertaking established in Northern Ireland, for the purpose of operating all types of rail freight or international passenger services, is entitled to such access or 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.

(3) The access rights described in paragraph (1) include access to railway infrastructure connecting the service facilities referred to in paragraph 2 of Schedule 1.

(4) The access rights described in paragraph (1) for the purposes of operating rail freight services include the right of access to railway infrastructure serving, or potentially serving, more than one final customer.

(5) The access rights of a railway undertaking for the purposes of the operation of an international passenger service include the right to pick up passengers at any station located on the international route and set them down at another, including stations located in the same Member State.

(6) The access rights granted under paragraphs (1) to (5) are exercisable subject to the provisions of regulation 33, and to paragraph (7).

(7) Subject to paragraph (8), the Office of Rail and Road may limit the access rights granted by this regulation on services between a place of departure and a destination which are covered by one or more public service contracts which are in accordance with the law of the European Union.

(8) The access rights granted under paragraph (5) must not be restricted except where the exercise of such rights would compromise the economic equilibrium of a public service contract.

(9) It is the duty of the infrastructure manager to ensure that the entitlements conferred by this regulation are honoured.

(10) Without prejudice to the generality of regulation 32, if a railway undertaking is denied the entitlements conferred on it by this regulation other than pursuant to a decision of the Office of Rail and Road under paragraph (7) or regulation 33 that railway undertaking has a right of appeal to the Office of Rail and Road in accordance with regulation 32.

Access to services

5.—(1) Subject to paragraph (2), all railway undertakings are entitled to services comprising—

- (a) the minimum access package; and
- (b) the track access to service facilities and the supply of services,

described in paragraphs 1 and 2 of Schedule 1.

(2) The services described in paragraph (1) must be supplied by the infrastructure manager or, as the case may be, service provider in an equitable, non-discriminatory and transparent manner.

(3) Requests by railway undertakings for access to, and the supply of, services described in paragraph 2 of Schedule 1 must be answered within a reasonable time limit as stipulated by the Office of Rail and Road.

(4) Subject to paragraph (7), where an infrastructure manager or a service provider supplies any of the services described in paragraph 2 of Schedule 1, a request for access to and supply of such services may only be refused if a viable alternative exists which would enable the railway undertaking to operate the freight or passenger service concerned on the same or an alternative route under economically acceptable conditions.

(5) Where—

- (a) a request referred to in paragraph (3) concerns access to and supply of services described in sub-paragraphs 2(a), (b), (c), (d), (e) and (f) of Schedule 1; and
- (b) such request is made to a service provider which is under the direct or indirect control of a dominant body or firm,

the infrastructure manager or service provider must justify, in writing, any decision to refuse such a request, and provide information about the viable alternative described in paragraph (4).

(6) Paragraph (4) does not oblige the infrastructure manager or service provider to make investments in resources or facilities in order to accommodate all requests by railway undertakings.

(7) Where the infrastructure manager or service provider of services referred to in paragraph 2 of Schedule 1, encounters a conflict between different requests, it must attempt to meet all requests in so far as possible. If no viable alternative is available, and it is not possible to accommodate all requests for capacity for the relevant facility on the basis of demonstrated need, the applicant may complain to the Office of Rail and Road.

(8) Where a service facility described in paragraph 2 of Schedule 1 has not been in use for at least two consecutive years and interest by a railway undertaking for access to this facility has been expressed to the service provider on the basis of demonstrated need, the service provider must—

- (a) offer the operation of the service facility, or part of it, for lease as a rail service facility; and
- (b) publicise this offer.

(9) Paragraph (8) does not apply if the service provider can demonstrate that ongoing redevelopment work reasonably prevents the use of the service facility by any railway undertaking.

(10) Where the infrastructure manager or service provider offers to supply any of the services described in paragraph 3 of Schedule 1, as an additional service he must, in response to a request from an applicant, supply the services to that applicant in a non-discriminatory manner

(11) An applicant may request the supply of any of the services described in paragraph 4 of Schedule 1 from an infrastructure manager or service provider but that infrastructure manager or service provider is under no obligation to supply the services requested. Where the infrastructure manager or service provider does offer to supply such services, it must do so in a non-discriminatory manner.

(12) Without prejudice to the generality of regulation 32, if an applicant is denied the entitlements conferred on it by this regulation, that applicant has a right of appeal to the Office of Rail and Road in accordance with regulation 32.

(13) In fulfilling their duties under this regulation, the infrastructure manager and service provider must comply with any relevant provisions regarding procedure and criteria adopted by the Commission.

Access to training facilities

6.—(1) Railway undertakings applying for a safety certificate in accordance with the requirements of Council [Directive 2004/49/EC](#) shall be entitled to a fair and non-discriminatory access to training facilities for train drivers and staff accompanying the trains, whenever such training is necessary for the fulfilment of requirements to obtain that certificate.

(2) The services offered under paragraph (1) must include training on—

- (a) necessary route knowledge;
- (b) operating rules and procedures
- (c) the signalling and control command system; and
- (d) emergency procedures,

in respect of the routes operated.

(3) The infrastructure manager, and any of his staff with responsibility for safety critical tasks, must have a fair and non-discriminatory access to the services listed in paragraph (2).

(4) It is the responsibility of the safety authority set up in accordance with the requirements of Council [Directive 2004/49/EC](#) to ensure that the provision of training services meets the safety requirements laid down in the National Safety Rules.

(5) If the training facilities to which access is granted by virtue of this regulation are available only through the services of one single railway undertaking, or the infrastructure manager, the Department must ensure that those facilities and services are available to applicants at a reasonable and non-discriminatory price, which is cost-related and may include a profit margin.

(6) Railway undertakings recruiting new train drivers, on-board staff, or staff with responsibility for safety critical tasks must take into account any training, qualifications and experience acquired by job-applicants from any previous employment with another railway undertaking.

(7) The staff described in paragraph (6) must be granted access to all documents attesting to their training, qualifications and experience, and be entitled to have copies of such documentation.

(8) It is the responsibility of each railway undertaking and infrastructure manager to provide the appropriate level of training and qualification of staff set out in Article 8 and Annex III to Council [Directive 2004/49/EC](#).

(9) For the purposes of this regulation—

- (a) “national safety rules” means any legislation and other requirements—
 - (i) applicable to Northern Ireland; and
 - (ii) which contain requirements (including common operating rules) relating to railway safety,

except that where the requirements in paragraph (9)(a)(i) consist of common operating rules of the railway it shall not include such rules which regulate matters which are covered by a technical specification for interoperability; and

- (b) “safety critical task” means—
 - (i) in relation to vehicle used on a railway—

- (aa) driving, despatching or any other activity which is capable of controlling or affecting the movement of that vehicle;
- (bb) signalling, and signalling operations, the operation of level crossing equipment, receiving and relaying of communications or any other activity which is capable of controlling or affecting the movement of that vehicle;
- (cc) coupling or uncoupling;
- (dd) installation of components;
- (ee) maintenance; or
- (ff) checking that that vehicle is working properly and, where carrying goods, is correctly loaded before being used;
- (ii) in relation to a railway—
 - (aa) installation or maintenance of any part of it or of the telecommunications system relating to it or used in conjunction with it, or of the means of supplying electricity directly to that transport system or to any vehicles using it or to the telecommunications system;
 - (bb) controlling the supply of electricity directly to it or to any vehicles used on it; or
 - (cc) receiving and relaying of communications;
- (iii) in relation to ensuring worker safety on a railway, any person ensuring the safety of any persons working on or near the track, whether or not the persons working on or near the track are carrying out safety critical work; and
- (iv) in relation to training, any practical training or the supervision of any practical training in any of the tasks set out in sub-paragraphs (i) to (ii),

which could significantly affect the health or safety of persons on a railway.

(10) An applicant denied access to training facilities contrary to the provisions of this regulation shall have a right of appeal to the Department in accordance with regulation 32(3).

(11) For the purposes of this regulation the provisions of regulation 32(3) shall apply to the Department as the appellant authority.

Cross-border agreements

7.—(1) The Department must ensure that provisions contained in cross-border agreements do not discriminate between railway undertakings, or restrict their freedom to operate cross-border services.

(2) Without prejudice to the division of competence between the European Union and Member States, the Department must notify the European Commission of any intention to enter into negotiations on, to conclude, or to revise a cross-border agreement.

(3) The Department must keep the European Commission regularly informed of any negotiations referred to in paragraph (2) and, where appropriate, must invite the European Commission to participate as an observer.

(4) The Department may apply or conclude a new or revised cross-border agreement with non-EEA countries provided that it is compatible with European Union law and does not harm the object and purpose of the transport policy of the European Union.