STATUTORY RULES OF NORTHERN IRELAND

2016 No. 420

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

PART 3

INFRASTRUCTURE MANAGEMENT

Management independence

8.—(1) Railway undertakings which are directly or indirectly controlled by a **[**[F1]Northern Ireland Department**]** must, in their management, administration and internal control over administrative, economic and accounting matters, maintain the status of an independent operator and hold, in particular, assets, budgets and accounts which are separate from those of **[**[F2]that Northern Ireland Department**]**.

(2) Subject to the requirements set out in Parts 4 and 5 and Schedules 2 and 3 about the determination of infrastructure charges and the allocation of infrastructure capacity an infrastructure manager must be responsible for its own management, administration and internal control.

Textual Amendments

F1 Words in reg. 8(1) substituted (31.12.2020) by The Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 (S.I. 2019/826), regs. 1(2), **9(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F2 Words in reg. 8(1) substituted (31.12.2020) by The Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 (S.I. 2019/826), regs. 1(2), **9(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

[[F3]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 be restricted to authorised staff of the infrastructure manager and not passed on to other entities within the vertically integrated undertaking.

Textual Amendments

F3 Regs. 8A-8C inserted (15.3.2019) by The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations (Northern Ireland) 2019 (S.R. 2019/15), regs. 1(1), **6**

Outsourcing and sharing the infrastructure manager's functions

8B.—(1) Provided that no conflicts of interest arise and that the confidentiality of commercially sensitive information is guaranteed, the infrastructure manager may outsource—

(a) functions to a different entity, provided the latter is not a railway undertaking, does not control a railway undertaking, or is not controlled by a railway undertaking;

(b) the execution of works and related tasks on development, maintenance and renewal of the railway infrastructure to railway undertakings or companies which control the railway undertaking, or are controlled by the railway undertaking.

(2) Within a vertically integrated undertaking, the infrastructure manager must not outsource essential functions to any other entity of the vertically integrated undertaking under paragraph (1)(a), unless that entity exclusively performs essential functions.

(3) Any entity carrying out essential functions which have been outsourced under paragraph (1)(a) must comply with regulations 8A, 8C, 9A, 14(6) and 19(3).

Textual Amendments

F3 Regs. 8A-8C inserted (15.3.2019) by The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations (Northern Ireland) 2019 (S.R. 2019/15), regs. 1(1), **6**

Impartiality of the infrastructure manager in respect of traffic management and maintenance planning

8C.—(1) The infrastructure manager must exercise the functions of traffic management and maintenance planning in a transparent and non-discriminatory manner and ensure that the persons in charge of taking decisions in respect of those functions are not affected by a conflict of interest.

(2) As regards traffic management, the infrastructure manager must ensure that railway undertakings, in cases of disruption concerning them, have full and timely access to relevant information. Where the infrastructure manager grants further access to the traffic management process, it must do so for the railway undertakings concerned in a transparent and non-discriminatory way.

(3) The infrastructure manager must carry out the scheduling of maintenance works in a non-discriminatory way. As regards the long-term planning of major maintenance and/or renewal of the railway infrastructure, the infrastructure manager must consult applicants and, so far as reasonably practicable, take into account the concerns expressed.**]**

Textual Amendments

F3 Regs. 8A-8C inserted (15.3.2019) by The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations (Northern Ireland) 2019 (S.R. 2019/15), regs. 1(1), **6**

Separation of accounts

9.—(1) Any body which incorporates the functions of both infrastructure manager and railway undertaking must—

(a) prepare and publish separate profit and loss accounts and balance sheets in respect of business relating to the—

(i) provision of transport services as a railway undertaking; and

(ii) management of railway infrastructure; and

(b) ensure that public funds granted to such a body is not transferred between that part of the body responsible for the provision of transport services and that responsible for management of railway infrastructure.

(2) Any body which conducts business activities relating to the provision of both rail freight transport services and passenger transport services must—

(a) prepare and publish separate profit and loss accounts and balance sheets in respect of each of these business activities;

(b) account separately for public funds granted for activities relating to the provision of transport services as public service remits in accordance with Article 7 of (EC) Regulation No 1370/2007; and

(c) ensure that public funds granted as described in sub-paragraph (b) are not transferred to activities relating to the provision of other transport services, or any other business.

(3) Accounts for the areas of activity described in paragraphs (1) and (2) must be kept in such a way as to allow for monitoring of—

(a) the prohibition set out in those paragraphs relating to the transfer of public funds; and

(b) the use of income from infrastructure charges and surpluses from other commercial activities.

[[F4](4) 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, the undertaking must be organised in distinct divisions that do not have a separate legal form within a single undertaking.**]**

(4) The monitoring of the observance of public service obligations, where stipulated in the terms of a contract required by regulation 19(11), must be carried out by the Department.

Textual Amendments

F4 Reg. 9(4) inserted (15.3.2019) by The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations (Northern Ireland) 2019 (S.R. 2019/15), regs. 1(1), **7**

[[F5]Financial transparency

9A.—(1) Infrastructure managers must not use income from infrastructure network management activities for any purposes other than to finance the business of the infrastructure manager, but this may include the servicing of the infrastructure manager's loans and the payment of dividends to its shareholders provided that the income is not used to pay dividends to undertakings within a vertically integrated undertaking which exercise control over both a railway undertaking and the infrastructure manager.

(2) Infrastructure managers must not grant loans to railway undertakings, either directly or indirectly.

(3) Railway undertakings must not grant loans to infrastructure managers, either directly or indirectly.

(4) Loans between legal entities of a vertically integrated undertaking may only be granted, disbursed and serviced at market rates and conditions which reflect the risk profile of the entity concerned.

(5) Other legal entities within a vertically integrated undertaking may only provide services to the infrastructure manager if those services are provided on a contractual basis and paid for at market rates or at prices which reflect the cost of production, plus a reasonable margin of profit.

(6) Debts attributed to the infrastructure manager must be—

(a) clearly separated from debts attributed to other legal entities within vertically integrated undertakings, and

(b) serviced separately from debts attributed to other legal entities within vertically integrated undertakings,

but, this does not prevent the final payment of debts being made via an undertaking which is part of a vertically integrated undertaking and which exercises control over both a railway undertaking and an infrastructure manager, or via another entity within the undertaking.

(7) Within vertically integrated undertakings, the infrastructure manager must keep detailed records of any commercial and financial relations with the other legal entities within that undertaking.

(8) In vertically integrated undertakings, the accounts of the infrastructure manager and of the other legal entities must be kept in a way that ensures fulfilment of the requirements of this regulation and allows for separate accounting and transparent financial circuits within the undertaking.

(9) Where essential functions are performed by a charging or allocation body in accordance with regulation 14(6) or 19(3), the provisions of this regulation apply to that body and references in this regulation to infrastructure manager, railway undertaking and other legal entities of a vertically integrated undertaking are to be taken as references to the respective divisions of the undertaking in question.

(10) This regulation does not apply to private infrastructure managers that are party to a public-private partnership concluded before 24th December 2016 where—

(a) the infrastructure manager does not receive any public funds, and

(b) any loans or financial guarantees operated by the infrastructure manager do not directly or indirectly benefit specific railway undertakings.**]**

Textual Amendments

F5 Reg. 9A inserted (15.3.2019) by The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations (Northern Ireland) 2019 (S.R. 2019/15), regs. 1(1), **8**

Independence of service providers from dominant bodies and firms

10.—(1) Where the service provider of a service described in paragraph 2 of Schedule 1 is under direct or indirect control of a dominant body or firm, it must hold separate accounts from that body or firm, including separate balance sheets and profit and loss accounts.

(2) Where the service provider of a service described in sub-paragraphs (a) – (f) of paragraph 2 of Schedule 1, is under direct or indirect control of a dominant body or firm, it must be independent in organisational and decision making terms from that body or firm.

(3) Paragraph (2) does not require the establishment of a separate legal entity to provide such services, and may be fulfilled by the formation of distinct divisions within a single legal entity.

(4) Where any of the services referred to in paragraph (2) are provided, and the operation of the service facility is ensured by either—

(a) an infrastructure manager, or

(b) a service provider under the direct or indirect control of an infrastructure manager,

the requirements of paragraphs (1) and (2) are met if regulations 14(6) and 19(3) are complied with.

Indicative railway infrastructure strategy

11.—(1) The Department must, by 19th December 2019 and after consultation with interested parties, publish an indicative railway infrastructure strategy for Northern Ireland which must—

(a) be drafted with a view to meeting future mobility needs in terms of the maintenance, renewal and development needs of the railway infrastructure in Northern Ireland;

[F6](b) . . . . . .

(c) be based on sustainable financing.

(2) The strategy referred to in paragraph (1) must—

(a) be in respect of such period as the Department must determine, and

(b) be renewed following this period, in respect of successive periods of time, the length and commencement of which the Department must determine.

(3) The strategy described in paragraph (1) is to be known as the indicative railway infrastructure strategy for Northern Ireland.

Textual Amendments

F6 Reg. 11(1)(b) omitted (31.12.2020) by virtue of The Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 (S.I. 2019/826), regs. 1(2), **10**; 2020 c. 1, Sch. 5 para. 1(1)

Business Plans

12.—(1) The infrastructure manager must draw up a business plan which is designed for the purpose of ensuring—

(a) optimal and efficient use and development of the infrastructure; and

(b) financial balance.

(2) The plan referred to in paragraph (1) must —

(a) include details of investment and financial programmes;

(b) provide the means by which the objectives set out in that paragraph are to be achieved; and

(c) take into account the strategy referred to in regulation 11 and the financing provided to it.

(3) Before it is approved, the infrastructure manager must ensure that applicants known to it and, upon their request, potential applicants, have access to the relevant information and are given the opportunity to express their views on the content of the draft business plan regarding the conditions for access and use, and the nature, provision and development of the infrastructure.

(4) Each railway undertaking must draw up a business plan, which must include their investment and financing programmes, and which is designed for the purpose of ensuring—

(a) financial equilibrium; and

(b) other technical, commercial and financial management objectives.

(5) The plan referred to in paragraph (4) must provide the means by which the objectives set out in that paragraph are to be achieved.

(6) The Office of Rail and Road shall, at least once a year, request confirmation that a business plan has been produced in accordance with paragraphs (1) and (4) and each infrastructure manager or, as the case may be, railway undertaking, to whom such a request is made shall be under an obligation to comply with that request.

(7) For the purposes of regulation 36, a request by the Office of Rail and Road in accordance with paragraph (6) is to be treated as a request for information.

Network Statement

13.—(1) The infrastructure manager must, following consultation with all interested parties, develop and publish a network statement containing the information described in paragraph (4).

(2) Where, by virtue of regulations 14(6) or 19(3) a charging body or, as the case may be, allocation body is responsible for the functions of the infrastructure manager in Parts 4 or 5, that charging body or allocation body must provide the infrastructure manager with such information as is necessary to enable that infrastructure manager to—

(a) include the information described in paragraph (4) in the network statement; and

(b) keep the network statement up to date in accordance with paragraph (7).

(3) A service provider who is not the infrastructure manager must provide the infrastructure manager of the infrastructure to which the relevant service facility is connected, with such information as is necessary to enable that infrastructure manager to—

(a) include the information described in paragraph (4)(b) and, where applicable, (d) in the network statement; and

(b) keep the network statement up to date in accordance with paragraph (7).

(4) The information referred to in paragraph (1) is—

(a) a section setting out the nature of the railway infrastructure which is available to applicants and the conditions of access to it;

(b) details as to where further information may be obtained about the nature of the track access to, and supply of services in, any of the service facilities to which access may be obtained pursuant to regulation 5;

(c) a description of the charging principles and tariffs, including appropriate details of the charging scheme, framework, methodology, rules and, where applicable, scales used in relation to the application of regulations 14, 16 and 18 and Schedule 2;

(d) information on charges for gaining access to and supply of service facilities listed in Schedule 1, including those which are provided by only one supplier, and including information on technical access conditions, or details of a website where such information is available free of charge in electronic format;

(e) the list of market segments to be published under paragraph 2(7) of Schedule 2, subject to any amendments made by the Office of Rail and Road;

(f) information relating to the performance scheme referred to in regulation 16;

(g) details for the supply of those services listed in Schedule 1 which are provided by only one supplier;

(h) a description of the principles and criteria for the allocation of infrastructure capacity, setting out the general capacity characteristics of the infrastructure available and any restrictions on its use, including likely capacity requirements for maintenance;

(i) information about procedures for dispute resolution and appeal relating to matters of access to rail infrastructure and services.

(j) the procedures and deadlines in the capacity allocation process and specific criteria employed in that process, in particular—

(i) the procedures according to which applicants may request infrastructure capacity from the infrastructure manager;

(ii) the information to be provided by applicants;

(iii) the timetable for the application and allocation process;

(iv) the principles governing the co-ordination process, in particular the arrangement of international train paths, and the effect the modification of such paths might have on other infrastructure managers;

(v) the dispute resolution procedure established in accordance with regulation 23(7);

(vi) details of any section of railway infrastructure which has been designated for use by specified types of rail services in accordance with regulation 25;

(vii) the procedures to be followed and criteria used where infrastructure is congested infrastructure, including any priority criteria for the allocation of congested infrastructure set in accordance with regulation 26(5) and (6);

(viii) the findings of any capacity enhancement plan completed in accordance with regulation 28;

(ix) details of restrictions on the use of infrastructure;

(x) the threshold quota to be applied by the infrastructure manager in requiring a train path to be surrendered under regulation 29(1); and

(xi) the conditions relating to previous levels of utilisation of capacity to be taken into account by the infrastructure manager in determining priorities in accordance with regulation 29(3);

(k) details of any section of railway infrastructure which has been designated for use by specified types of rail services in accordance with regulation 25;

(l) the measures taken by the infrastructure manager to ensure fair treatment of rail freight services and international services, and in responding to ad hoc requests for infrastructure capacity.

(m) a template form for requests for capacity and detailed information about the allocation procedures for international train paths;

(n) information related to applications for–

(i) a licence, as published under regulation 10(1) of the Train Driving Licences and Certificates Regulations (Northern Ireland) 2010 [M1]; and

(ii) a rail safety certificate issued in accordance with regulation 5 of the Railways (Safety Management) Regulations (Northern Ireland) 2006 [M2].

or, as an alternative to the information described in (i) and (ii) above, a reference to a website where such information is made available free of charge in electronic format.

(o) a model agreement for the conclusion of a framework agreement between an infrastructure manager and an applicant in accordance with regulation 21; and

(p) the criteria to determine failure to use capacity published under regulation 18(3)(a).

(5) The information provided under paragraph (4)(a) must be made consistent, on an annual basis with, or must refer to, the rail infrastructure registers to be published in accordance with **[**[F7]regulation 35 of the Railways (Interoperability) Regulations 2011**]**.

(6) The information provided under paragraph (4)(c) and (d) must include–

(a) information on changes to charges referred to in that paragraph already decided upon or foreseen in the next five years, if available; and

(b) information on charges as well as other relevant information on access applying to services listed in Schedule 1 which are provided only by one supplier.

(7) The infrastructure manager must keep the network statement up to date and modify it as necessary.

(8) The infrastructure manager must publish the network statement in at least two official languages of the European Union.

(9) The infrastructure manager must publish the network statement not less than four months before the deadline for applications for infrastructure capacity as described under paragraph 2(1) of Schedule 3.

(10) Any fee charged by the infrastructure manager for the provision, on request, of a copy of the network statement must not exceed the cost of producing that copy.

(11) The content of the network statement must be made available free of charge in electronic format on the web portal of the infrastructure manager and must be accessible through a common web portal.

(12) The common web portal referred to in paragraph (11) must be set up by the infrastructure manager in the framework of its cooperation with infrastructure managers from **[**[F8]the Republic of Ireland**]**, in accordance with regulations 17 and 20.

(13) If the information required under paragraphs (2) or (3) is not provided to the satisfaction of the infrastructure manager, the infrastructure manager may refer the matter to the Office of Rail and Road for a determination as to whether additional information must be supplied.

(14) Where a matter is referred to the Office of Rail and Road in accordance with paragraph (13), it is the duty of the Office of Rail and Road to make the determination within such period as is reasonable in all the circumstances, and any such determination shall be binding on all parties.

Textual Amendments

F7 Words in reg. 13(5) substituted (31.12.2020) by The Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 (S.I. 2019/826), regs. 1(2), **11(2)**; 2020 c. 1, Sch. 5 para. 1(1)

F8 Words in reg. 13(12) substituted (31.12.2020) by The Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 (S.I. 2019/826), regs. 1(2), **11(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

M1 S.R. 2010 No. 132

M2 S.R. 2006 No. 237

[[F9]Coordination mechanisms

13A.—(1) The main infrastructure manager must put in place appropriate a coordination mechanism to ensure it coordinates, at least annually, with all interested railway undertakings as well as applicants referred to in regulation 12(3) regarding the matters set out in paragraph (3).

(2) Where relevant, representatives of users of the rail freight and passenger transport services, and national, local or regional authorities, must be invited to participate in the coordination required by paragraph (1) and the Office of Rail and Road may participate as an observer.

(3) The matters referred to in paragraph (1) are—

(a) the needs of applicants related to the maintenance and development of the infrastructure capacity;

(b) the content of the user-oriented performance targets contained in the agreement referred to in regulation 15(2) and of the incentives referred to in regulation 15(3) and their implementation;

(c) the content and implementation of the network statement referred to in regulation 13;

(d) issues of intermodality and interoperability;

(e) any other issues related to the conditions for access, the use of the infrastructure and the quality of the services of the infrastructure manager.

(4) The main infrastructure manager must draw up and publish guidelines for the coordination required by paragraph (1) in consultation with interested parties and must publish on its website an overview of the activities undertaken pursuant to this regulation.**]**

Textual Amendments

F9 Regs. 13A-13B inserted (15.3.2019) by The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations (Northern Ireland) 2019 (S.R. 2019/15), regs. 1(1), **9**

European Network of Infrastructure Managers

[F10]13B. . . . . .

Textual Amendments

F10 Reg. 13B omitted (31.12.2020) by virtue of The Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 (S.I. 2019/826), regs. 1(2), **12**; 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation:
There are currently no known outstanding effects for the The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016, PART 3.