
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 Member State 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 the State.

(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.

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.

(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.

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;
- (b) take into account, as necessary, the general needs of the European Union, including the need to cooperate with neighbouring countries which are not EEA States; and
- (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.

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⁽¹⁾; and

(1) S.R. 2010 No. 132

(ii) a rail safety certificate issued in accordance with regulation 5 of the Railways (Safety Management) Regulations (Northern Ireland) 2006⁽²⁾.

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 Article 35 of [Directive 2008/57/EC](#) of the European Parliament and of the Council of 17th June 2008 on the interoperability of the rail system within the Community (Recast)⁽³⁾.

(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 other Member States, 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.

(2) [S.R. 2006 No. 237](#)

(3) [O.J. L191, 18.7.08, p.1](#), to which there are amendments not relevant to these Regulations.