
STATUTORY RULES OF NORTHERN IRELAND

2016 No. 420

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

PART 4

INFRASTRUCTURE CHARGES

Establishing, determining and collecting charges

14.—(1) The Department must establish the charging framework and the specific charging rules governing the determination of the fees to be charged in accordance with paragraphs (3) and (4).

(2) Subject to paragraph (7), the infrastructure manager must—

- (a) determine the fees to be charged for use of the infrastructure in accordance with the charging framework, the specific charging rules, and the principles and exceptions set out in Schedule 2; and
- (b) collect those fees.

(3) Subject to the provisions in paragraphs (1) and (2), the infrastructure manager must –

- (a) charge fees for the use of the railway infrastructure for which the infrastructure manager is responsible; and
- (b) utilise such fees as are received to fund the infrastructure manager’s business.

(4) A service provider must –

- (a) charge fees for the use of a service facility for which the service provider is responsible; and
- (b) utilise such fees as are received to fund the service provider’s business.

(5) Applicants must, subject to the right of appeal to the Office of Rail and Road, pay such fees as are charged by the infrastructure manager or service provider for use of the railway infrastructure or service facility.

(6) Subject to paragraph (7), if the infrastructure manager in its legal form, organisation and decision making functions, is not independent of any railway undertaking, the infrastructure manager must ensure that the functions described in this Part and Schedule 2 are performed by a charging body that is independent in its legal form, organisation and decision-making from any railway undertaking.

(7) The separation required by paragraph (6) does not apply to the function of the collection of fees charged in accordance with paragraph (2)(b).

(8) The infrastructure manager or service provider must be able to justify that the charges invoiced to each railway undertaking for access to the infrastructure comply with the methodology, rules and, where applicable, scales laid down in the network statement and, where information about the

charges imposed is requested by the Office of Rail and Road the infrastructure manager or service provider must supply the information requested.

(9) Infrastructure managers or service providers must co-operate to achieve the efficient operation of train services which cross more than one infrastructure network and should, in particular, aim to guarantee the optimum competitiveness of international rail freight.

(10) Infrastructure managers or service providers may establish such joint organisations as may be appropriate to enable the co-operation referred to in paragraph (9) to be achieved and any such organisations, or co-operation arising out of the operation of such organisations, must be bound by the rules set out in these Regulations.

(11) The infrastructure manager or service provider must respect the commercial confidentiality of information provided to it by applicants for infrastructure capacity.

Infrastructure costs and accounts

15.—(1) The Department must ensure that, under normal business conditions and over a reasonable time period, which must not exceed five years, the accounts of an infrastructure manager shall at least balance—

- (a) income from infrastructure charges;
- (b) surpluses from other commercial activities;
- (c) non-refundable incomes from private sources; and
- (d) state funding, including, where appropriate, advanced payments from the state.

with railway infrastructure expenditure.

(2) The infrastructure manager must enter into an agreement with the Department which must fulfil the basic parameters of Annex V of the Directive, and cover a period of not less than five years.

(3) The infrastructure manager must, with due regard to safety and to maintaining and improving the quality of the infrastructure service, be provided with incentives to reduce the costs of provision of infrastructure and the level of access charges.

(4) In fulfilling its obligations under paragraph (2), the Department must base its decision on an analysis of the achievable cost reductions.

(5) The infrastructure manager must develop and maintain a register of its assets and the assets it is responsible for managing insofar as this information would be used to assess the funding needed to repair or replace such assets.

(6) The register referred to in paragraph (5) must be accompanied by details of expenditure on renewal and upgrading of the infrastructure.

(7) The infrastructure manager must establish a method for apportioning costs to the different categories of services offered by the railway undertakings, which must be updated from time to time on the basis of best international practice.

(8) Where required by the Department, the infrastructure manager must seek prior approval for the method of apportioning costs referred to in paragraph (7).

Performance scheme

16.—(1) The infrastructure manager must establish a performance scheme as part of the charging system to encourage railway undertakings and the infrastructure manager to minimise disruption and improve the performance of the network.

(2) The performance scheme referred to in paragraph (1) may include—

- (a) penalties for actions which disrupt the operation of the network;

- (b) compensation for undertakings which suffer from disruption; and
- (c) bonuses that reward better than planned performance.

(3) The performance scheme referred to in paragraph (1) must be based on the basic principles listed in paragraph 7 of Schedule 2 and must apply in a non-discriminatory manner throughout the network to which that scheme relates.

(4) The infrastructure manager must, as soon as possible, communicate to the railway undertaking a calculation of payments due under the performance scheme.

(5) A calculation under paragraph (4) must encompass all delayed train runs within a period of at most one month.

(6) Without prejudice to existing appeal procedures and to the right of appeal under regulation 32, in the case of disputes relating to the performance scheme, a dispute resolution system must be made available in order to settle such matters promptly.

(7) The dispute resolution system described in paragraph (6) must be impartial towards the parties involved and, if this system is applied, a decision must be reached within a time limit of 10 working days.

(8) Once a year, the infrastructure manager must publish the annual average level of performance achieved by the railway undertakings on the basis of the main parameters agreed in the performance scheme.

Cooperation in relation to charging systems on more than one network

17.—(1) The infrastructure manager must cooperate with other infrastructure managers within the European Union to enable the application of efficient charging schemes, and must associate with them to coordinate the charging or to charge for the operation of train services which cross more than one infrastructure network of the rail system within the European Union.

(2) The infrastructure manager must, in particular, aim to guarantee the optimal competitiveness of international rail services and ensure the efficient use of the railway networks; to this end the infrastructure manager must cooperate with other infrastructure managers in the European Union to establish appropriate procedures, subject to the rules set out in these regulations.

(3) For the purpose of paragraphs (1) and (2) the infrastructure manager must cooperate with other infrastructure managers within the European Union to enable mark-ups (as referred to in Schedule 2, paragraph 2) and performance schemes (as referred to in regulation 16) to be efficiently applied for traffic crossing more than one network of the rail system within the European Union.

Reservation charges

18.—(1) The infrastructure manager may levy an appropriate charge (“reservation charge”) for capacity that is requested but not used.

(2) Where the infrastructure manager makes provision for a reservation charge to be imposed, that charge—

- (a) must provide incentives for efficient use of capacity, and
- (b) is mandatory in the case of a regular failure by an applicant to use the paths, or part of the paths, allocated to them.

(3) Where provision for a reservation charge has been made—

- (a) the infrastructure manager must publish in its network statement the criteria used to determine the failure to use allocated paths, and
- (b) the Office of Rail and Road must control such criteria in accordance with regulations 32 and 34.

(4) The infrastructure manager must provide, at the request of any interested party, information about the infrastructure capacity allocated to applicants.