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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 420**

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

PART 6

REGULATION AND APPEALS

**Regulatory body**

**31.**—(1) The Office of Rail and Road is designated as the regulatory body for the purposes of these regulations and when carrying out its functions under these Regulations shall have a duty to act in a manner which is best calculated—

- (a) to promote improvements in railway service performance;
- (b) to protect the interests of users of railway services;
- (c) to promote the use of the railway network for the carriage of passengers and goods, and the development of that network, to the extent that it considers economically practicable;
- (d) to contribute to the development of an integrated system of transport of passengers and goods;
- (e) to promote efficiency and economy on the part of persons providing railway services;
- (f) to promote measures designed to facilitate the making, by passengers, of journeys which involve use of the services of more than one passenger service operator;
- (g) to take account of the need to protect all persons from dangers arising from the operation of railways;
- (h) to have regard to the effect on the environment of activities connected with the provision of railway services;
- (i) to have regard to any general guidance given to it, by the Department, about railway services or other matters relating to railways;
- (j) to have regard to the funds available to the Department for the purposes of its functions in relation to railways and railway services;
- (k) to have regard to the interests of persons who are disabled when performing its duties relating to the services for the carriage of passengers by railway or to station services; and
- (l) where any general guidance is given to the Office of Rail and Road for the purposes of subparagraph (i) above—
  - (i) it may be varied or revoked by the Department at any time; and
  - (ii) the guidance, and any variation or revocation of the guidance, must be published by the Department in such manner as it considers appropriate.

(2) The Office of Rail and Road 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 are only permitted if carried out under the supervision of the Office of Rail and Road and, if such negotiations are likely to contravene the requirements of these regulations, it is the duty of the Office of Rail and Road to intervene.

(4) The Office of Rail and Road may in particular, as part of the intervention mentioned in paragraph (3), issue such directions to the applicant or the infrastructure manager as it considers appropriate for the purpose of ensuring that no contravention arises or, to the extent that a contravention has arisen, that it ceases.

(5) Where the Office of Rail and Road prescribes the manner and form in which any notification or appeal must be lodged in accordance with these regulations, it must publicise this information in such manner as it considers appropriate.

(6) Procedural arrangements made by the Office of Rail and Road must ensure that a person with ultimate responsibility for taking a decision under regulations 32, 33, 34 and 35, complies with the criteria listed in paragraph (7); and

(a) shall include arrangements under which a member, employee or committee-member who has a financial or other personal interest which is likely to influence his performance of a particular function is obliged-

(i) to declare the interest; and

(ii) to withdraw from the performance of the function to the relevant extent.

(b) Procedural arrangements made by the Office of Rail and Road shall include arrangements under which a member, employee or committee-member who has a financial or other personal interest which is relevant to a particular function but does not fall under sub-paragraph (a) is obliged –

(i) to declare the interest; and

(ii) unless the members of the Office of Rail and Road direct otherwise, to withdraw from the performance of the function to the relevant extent

(7) The criteria are that such persons—

(a) must make an annual declaration of—

(i) their commitment to the impartial fulfilment of their duties under these regulations, and

(ii) any direct or indirect interests which may be considered prejudicial to their independence and which might influence their performance of any function;

(b) must withdraw from decision making in cases which concern an undertaking with which they have had a direct or indirect connection in the year before the commencement of any procedure relating to a decision described in paragraph (6);

(c) must not seek or take instructions from any government or other entity when carrying out their functions; and

(d) must have no professional position or responsibility with any regulated railway undertaking or entity for a period of not less than a year commencing at the end of their term of employment to take decisions under paragraph (6).

(8) Without prejudice to the right of any person to make an application to the Court under Order 53 of the Rules of Court Judicature (NI) 1980(1), it is the duty of any person to whom a direction is given under paragraph (4) to comply with and give effect to that direction.

(9) The Office of Rail and Road may levy a charge on the Infrastructure Manager for such fees and expenses as are appropriate for the discharge of its duties.

### **Appeals to the regulatory body**

**32.**—(1) Subject to paragraph (3), an applicant has the right of appeal to the Office of Rail and Road 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, an allocation body, a charging body, a service provider or as the case may be, a railway undertaking or any interested party, concerning the matters described in paragraph (2).

(2) Those matters are—

- (a) the network statement produced in accordance with regulation 13, in its provisional and final versions;
- (b) the information which, by virtue of regulation 13(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 14;
- (e) the level of structure of railway infrastructure charges, the principles of which are prescribed in Part 4 and Schedule 2, which it is, or may be, required to pay;
- (f) the arrangements for access granted under Part 2 and Schedule 1; and
- (g) access to and charging for services provided under Part 2 and Schedule 1.

(3) Where the Office of Rail and Road has received an appeal under paragraph (1) it must -

- (a) as appropriate, ask for all relevant information and initiate a consultation with the relevant parties within one month of the date of receipt of the appeal; and
- (b) within a predetermined and reasonable time, and, in any case, within six weeks of the date of receipt of all relevant information (including information provided pursuant to regulations 31 and 36)—
  - (i) make a decision;
  - (ii) inform the relevant parties of its decision, providing reasons for this;
  - (iii) where appropriate, issue a direction to the infrastructure manager, allocation body, charging body, service provider or, as the case may be, railway undertaking, to remedy the situation from which the appeal arose; and
  - (iv) publish the decision.

(4) When an appeal under paragraph (1) contests a decision under regulation 5(4) to refuse a request for access to, and the supply of services described in paragraph 2 of Schedule 1, a decision under paragraph (3) must include a determination as to whether, in respect of the access and provision of services to which the appeal relates, a viable alternative exists.

(5) When an appeal under paragraph (1) contests a decision to refuse or restrict the provision of services in circumstances where there are conflicting requests as described in regulation 5(7), a determination under paragraph (3) must include a determination, as appropriate and in respect of the circumstances to which the appeal relates, of—

- (a) whether a viable alternative as described in regulation 5(4) exists;
- (b) whether it is possible to accommodate the conflicting requests on the basis of demonstrated need; and
- (c) whether, and if so what, part of the service capacity must be granted to the applicant.

(6) Where a decision under paragraph (3) concerns a refusal by the infrastructure manager or allocation body to allocate infrastructure capacity, or concerns an appeal against the terms of an offer of infrastructure capacity, the Office of Rail and Road must, in such a decision, 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 and issue directions to that effect.

(7) Without prejudice to the right of any person to make an application to the court under Order 53 of the Rules of the Court of Judicature (Northern Ireland) 1980(2).

- (a) a decision by the Office of Rail and Road on an appeal brought under this regulation is binding on all parties affected by that decision;
- (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.

### **Regulatory decisions concerning international passenger services**

**33.**—(1) The Office of Rail and Road must at the request of a relevant competent authority or interested railway undertaking, determine whether the principle purpose of a service is to carry passengers between stations located in different Member States.

(2) In fulfilling its function under paragraph (1), the Office of Rail and Road must follow the procedure and criteria set out in Regulation (EU) 896/2014 of 11 August 2014 on new rail passenger services(3).

(3) The Office of Rail and Road must—

- (a) at the request of a relevant party and in accordance with paragraphs (5) and (6) determine whether the exercise of the right conferred under regulation 4 by an applicant for infrastructure capacity notified under regulation 19(14) would compromise the economic equilibrium of a relevant public service contract; and
- (b) make the determination on the basis of an objective economic analysis and in accordance with pre-determined criteria published by it.

(4) For the purposes of paragraph (3), and (6)(d) a relevant party is—

- (a) the competent authority or authorities that awarded the public service contract;
- (b) any other competent authority with a right to limit access along the route of the international passenger service notified under regulation 19(14);
- (c) the infrastructure manager; and
- (d) the railway undertaking performing the relevant public service contract to which the request relates.

(5) Within one month of receipt of a request under paragraph (3)(a), the Office of Rail and Road must consider the information provided, and, as appropriate, ask for further relevant information from, and initiate consultation with, all relevant parties.

(6) The Office of Rail and Road must, within six weeks of receipt of all relevant information and, where appropriate, of any representations made by the Department—

- (a) complete a consultation initiated under paragraph (5) or, as the case may be, under paragraph (9) if required;
- (b) make a decision on a request made under paragraph (3);

(2) The Rules of the Supreme Court were renamed the Rules of the Court of Judicature under para 3(3) of Schedule 11 to the Constitutional Reform Act 2005.

(3) O.J. No. L239, 12.8.2014, pl.

- (c) where appropriate, issue a direction to the infrastructure manager, allocation body, charging body, service provider or, as the case may be, railway undertaking, limiting the access rights conferred under regulation 4, if the exercise of those rights would compromise the economic equilibrium of a relevant public service contract;
- (d) provide the relevant parties and any railway undertaking seeking access rights for the purpose of operating an international passenger service with the grounds for its decision; and specify a reasonable time period within which, and the conditions under which, any of those parties may request a reconsideration of the decision or direction or both.

(7) Where the Office of Rail and Road has received a properly made request for a reconsideration of its decision or direction in accordance with paragraph (6)(d), any decision or direction it has made under paragraph (6) will not take effect pending reconsideration.

(8) Where the Office of Rail and Road has received a properly made request for a reconsideration of its decision or direction in accordance with paragraph (6)(d), it must, within six weeks of the date of receipt of all relevant information and of any representations made by the Department—

- (a) make a reconsidered decision on the request; and
- (b) where appropriate, issue or reissue a direction or directions to the infrastructure manager, allocation body, charging body, service provider or, as the case may be, railway undertaking.

(9) In making a decision on a request made under paragraph (3), or a request for a reconsideration of its decision under paragraph (6), the Office of Rail and Road must either—

- (a) confirm that no modification of the infrastructure manager or allocation body's decision to award access rights is required; or
- (b) require modification of that decision in accordance with directions issued by the Office of Rail and Road.

(10) Without prejudice to the right of any person to make an application to the Court under Order 53 of the Rules of the Court of Judicature (Northern Ireland) 1980(4)—

- (a) a decision by the Office of Rail and Road on a request made under paragraph (3) or a request for a reconsideration of its decision under paragraph (6) 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.

(11) The procedure and criteria to be applied by the Office of Rail and Road in the performance of its functions under paragraphs (3) and (8) shall be subject to, and include, the relevant procedures and criteria set out in Commission Implementing Regulation (EU) No. 869/2014(5) of 11 August 2014 on new rail passenger services.

### **Monitoring the rail services markets**

**34.**—(1) The Office of Rail and Road must monitor the competitive situation in the rail services markets.

(2) In particular it must-

- (a) control the matters referred to in regulation 32(2) on its own initiative and with a view to preventing discrimination against applicants; and

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(4) The Rules of the Supreme Court were renamed the Rules of the Court of Judicature under para 3(3) of Schedule 11 to the Constitutional Reform Act 2005

(5) O.J. No. L239, 12.8.2014, p.1-10

- (b) check whether the network statement contains discriminatory clauses or creates discretionary powers for the infrastructure manager that may be used to discriminate against applicants.
- (3) The Office of Rail and Road must, where appropriate and on its own initiative, give appropriate directions to correct—
- (a) discrimination against applicants;
  - (b) market distortion; or
  - (c) undesirable developments in relation to the competitive situation in the rail services markets, in particular with reference to the matters referred to in paragraph 32(2).
- (4) 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, it is the duty of any person to whom a direction is given under paragraph (3) to comply with and give effect to that direction.
- (5) The Office of Rail and Road must regularly, and in any case at least every two years, consult representatives of users of the rail freight and passenger transport services, to take into account their views on the rail market.
- (6) The Department must, while respecting the role of social partners, supply to the European Commission on an annual basis necessary information on the use of the networks and evolution of framework conditions in the rail sector.
- (7) Information under paragraph (6) must conform with any provisions to ensure consistency in the reporting obligations contained in Commission Implementing Regulation (EU) 2015/1100 of 7<sup>th</sup> July 2015 on the reporting obligations of the Member States in the framework of rail market monitoring(6).
- (8) The Office of Rail and Road and the Department as safety authority must co-operate closely, in particular with a view jointly, to develop a framework for information sharing and co-operation aimed at preventing adverse effects on competition or safety in the rail services markets.

### **Audits**

- 35.**—(1) The Office of Rail and Road may carry out an audit or initiate an external audit of an infrastructure manager, service provider and, where relevant, railway undertakings to verify compliance with the account separation provisions laid down in regulation 9.
- (2) For the purposes of paragraph (1) the power of the Office of Rail and Road, under regulation 36 to request relevant information to perform its functions includes a power to request any relevant party to provide all or part of the accounting information listed in Schedule 5 with a sufficient level of detail as is deemed necessary and proportionate.
- (3) For the purposes of paragraph (2) “any relevant party” includes an infrastructure manager, service provider, railway undertaking or other entity performing or integrating different types of rail transport or infrastructure management as referred to in regulations 5 and 9(1).
- (4) The Office of Rail and Road may draw conclusions from the accounts concerning state aid issues which it must report to the Department.

### **Duty of certain persons to furnish information to the Department or the Office of Rail and Road**

- 36.**—(1) The infrastructure manager, applicant, service provider, allocation body, charging body or any other party shall be under a duty to furnish to the Department or the Office of Rail and Road, in such form and manner as requested, such information as is required, being information which the

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(6) O.J. No. L181/1, 9.7.2015

Department or the office of Rail and Road considers necessary for the purpose of facilitating the performance of any functions of the Department or the office of Rail and Road, or any other function or activity in relation to railway services.

(2) Holder of European licences shall be under a duty to furnish to the office of Rail and Road, in such form and manner as it may by notice request, such information as it may so request, being information which the Office of Rail and Road considers necessary for the purpose of facilitating the performance of any of its functions under any instrument made for the purpose of implementing [Directive 2004/49/EC](#) dated 29<sup>th</sup> April 2004(7), both of the European Parliament and of the Council, and [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21<sup>st</sup> November 2012.

(3) A request under subsections (1) and (2) above must be complied with within such time (being not less than 28 days from the making of the request) as may be specified in the request.

(4) If a request under subsection (1) above is not complied with, the Department or the office of Rail and Road may serve a notice under subsection (6) below on the person from whom the information was requested under subsection (1) above.

(5) If a request under subsection (2) above is not complied with, the Office of Rail and Road may serve a notice under subsection (6) below on the person from whom the information was requested under subsection (2) above.

(6) A notice under this subsection is a notice signed by the Department or the Office of Rail and Road and requiring the person on whom it is served to produce, at a time and place specified in the notice, to the Department or to the Office of Rail and Road, any documents which are specified or described in the notice and are in that person's custody or under this control.

(7) No person shall be required under this section to produce any documents which he could not be compelled to produce in civil proceedings in the court, or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.

(8) A person who intentionally alters, suppresses or destroys any document which he has been required by any notice under subsection (6) above to produce, is guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
- (b) on conviction or indictment, to a fine.

(9) If a person makes default in complying with a notice under subsection (6) above, the court may, on the application of the Department or the office of Rail and Road in the case of a request under subsection (1) above, or the Office of Rail and Road in the case of a request under subsection (2) above, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application, shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.

(10) Any reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form; and the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.

(11) In this section “the court” means the Court of Judicature.

### **Co-operation between regulatory bodies**

**37.—**(1) The Office of Rail and Road must exchange information about its work, decision making principles, and practice with the national regulatory bodies of other Member States, and in particular

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(7) O.J. No. L164, 30.04.2004, p.44-133

it must exchange information on the main issues of its procedures and on the problems of interpreting transposed European Union railway law.

(2) The Office of Rail and Road must cooperate with such bodies for the purpose of coordinating their decision-making across the European Union, and for this purpose it must participate and work together with them in a network, to be coordinated and supported by the Commission, that convenes at regular intervals.

(3) The Office of Rail and Road must cooperate closely with such bodies, including through working arrangements, for the purpose of mutual assistance in their market monitoring tasks and handling appeals or investigations.

(4) In the case of an appeal or an own-initiative investigation on issues of access or charging relating to an international train path, as well as in the framework of monitoring competition on the market related to international rail transport services, the Office of Rail and Road must consult the national regulatory bodies of all other Member States through which the international train path concerned runs and, where appropriate, the European Commission, and must request all necessary information from them before taking its decision.

(5) The Office of Rail and Road must use any information it receives pursuant to paragraph (4) only for the purpose of handling the appeal or investigation.

(6) If the Office of Rail and Road receives a request for information from the regulatory body of another Member State in relation to an appeal or investigation of a type described in paragraph (4) for which that regulatory body is responsible, the Office of Rail and Road must use its best endeavours to provide all such information that it has the right to request under these regulations.

(7) If the Office of Rail and Road receives an appeal, or conducts an investigation on its own initiative in relation to an issue for which another regulatory body is responsible, it must transfer relevant information to that regulatory body in order for that body to take measures regarding the parties concerned.

(8) Infrastructure managers required to co-operate in the allocation of infrastructure capacity crossing more than one network, as referred to in regulation 20(2)(a), must provide, without delay, all the information requested by the Office of Rail and Road, which is necessary for the purpose of handling the appeal or investigation referred to in paragraph (4).

(9) The Office of Rail and Road may transfer such information regarding the international train path concerned to the regulatory bodies referred to in paragraph (4).

(10) The Office of Rail and Road must work with the regulatory bodies of other Member States to develop common principles and practices for making the decisions for which they are empowered under these regulations.

(11) The Office of Rail and Road must review decisions and practices of infrastructure managers required to co-operate over train services which cross more than one network, as referred to in paragraph (8) and regulation 20, that implement provisions in these regulations or which otherwise facilitate international rail transport.