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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 8**

**EUROPEAN LICENCES**

**Prohibition of unlicensed provision of international services**

**43.**—(1) Where a person is a railway undertaking to which these regulations apply, that person shall not provide a train service in Northern Ireland unless he is authorised to do so by a European licence which is appropriate for that train service, and any person who provides such services without such a licence shall be guilty of an offence.

(2) Any person who is guilty of an offence under this regulation shall be liable—

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

(3) No proceedings shall be instituted in Northern Ireland in respect of an offence under this regulation except by or on behalf of the Office of Rail and Road.

(4) In this regulation the expression “European licence” includes a licence granted pursuant to any action taken by an EEA State for the purpose of implementing the 1995 Directive<sup>(1)</sup> or the 2012 Directive<sup>(2)</sup>.

**Appointment of licensing authority and grant of European licences**

**44.**—(1) The Department is hereby designated as the body responsible for granting European licences.

(2) In exercise of its functions under these regulations, the Department shall comply with Commission implementing Regulation (EU)2015/171 of 4 February 2015 on certain aspects of the procedure of licensing of railway undertakings<sup>(3)</sup>.

(3) The Department shall determine and publish the procedures for the granting of European licences and inform the Commission of those procedures.

(4) Subject to and in accordance with these regulations, the Department shall grant a European licence to a railway undertaking if that undertaking—

- (a) is established in Northern Ireland, and
- (b) makes an application to the Department in accordance with the published procedures.

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<sup>(1)</sup> O.J. No. L143, 27.6.1995, p70-74.

<sup>(2)</sup> O.J. No. L343, 14.12.2012, p.32, as correct by Corrigendum, O.J. L67, 12.3.15, p.32

<sup>(3)</sup> O.J. No. L29, 5.12.15, p.3

(5) An applicant shall submit with his application such application fee as the Department may reasonably require and such information, specified in the published procedures referred to in paragraph (4)(b), as the Department reasonably requires in order to be satisfied that the applicant satisfies the requirements referred to in Schedule 4.

(6) Before granting or modifying a European licence the Department shall consult the Health and Safety Executive for Northern Ireland.

(7) A European licence may authorise the provision of train services generally or be restricted to particular types of service specified in the licence.

(8) At any time after submitting the application the applicant shall submit such further information as the Department may reasonably require in connection with the application.

(9) The Department shall grant a European licence if, and only if, it is satisfied before the start of the applicant's activities, that the applicant will be able at any time to satisfy the requirements referred to in Schedule 4 as to good repute, financial fitness, professional competence and insurance cover for civil liberties.

(10) An application for a European licence shall be determined by the Department as soon as possible and in any event within three months of receipt of the information referred to in paragraph (8).

(11) In respect of each application for a European licence the Department shall give notice stating—

- (a) that the applicant has made an application for a European licence;
- (b) the name of the applicant and the address of its registered or principal office; and
- (c) a summary of the activities which the applicant wishes to carry out pursuant to the European licence.

(12) A notice under paragraph (11) shall be given by publishing the notice in such manner as the Department considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the European licence.

(13) The Department shall inform the applicant in writing of its decision and, where it refuses to grant a European licence, the refusal shall state the reasons for its decision.

(14) When the Department grants a European licence in accordance with this regulation it shall inform the European Commission of the grant.

(15) As soon as practical after granting a European licence the Department shall send a copy of the licence to the Health and Safety Executive for Northern Ireland.

(16) Any sums received by the Department under this regulation shall be paid into the Consolidated Fund.

(17) Schedule 4 (qualifications for European licence) shall have effect.

### **Validity of European licences**

**45.—**(1) A European licence shall, unless previously revoked or surrendered in accordance with any provision in these regulations or the licence, continue in force as long as the Department is satisfied that the railway undertaking concerned continues—

- (a) to satisfy the requirements referred to in Schedule 4 as to good repute, financial fitness, professional competence and insurance cover for civil liabilities, and
- (b) to submit the licence to the Department for review or approval when so required under regulation 46.

(2) A European licence may incorporate specific provisions governing the suspension or revocation of the licence.

## **Monitoring, suspension and revocation of European licences**

46.—(1) Subject to paragraph (5), this regulation applies to a railway undertaking to which a European licence has been granted.

(2) The Department must take such steps as necessary to enable it to determine whether the railway undertaking complies with the requirement referred to in Schedule 4—

- (a) at regular intervals of at least 5 years; or
- (b) at any time the Department considers that there is serious doubt whether or not a railway undertaking complies with the requirement.

(3) If, having taken the steps referred to in paragraph (2), the Department is satisfied that a railway undertaking does not comply with any such requirement, it shall revoke the European licence held by the railway undertaking or suspend it.

(4) The Department shall revoke a European licence if proceedings have been commenced for the winding up of a railway undertaking on the grounds that the undertaking is unable to pay its debts and the Department is satisfied that there is no reasonable prospect of satisfactory financial restructuring of the undertaking within a reasonable period of time.

(5) Where the Department is satisfied that there is a serious doubt whether a railway undertaking to which a European licence has been granted by a licensing authority other than itself complies with any requirement of the 2012 Directive, it shall without delay so notify that licensing authority. In this paragraph, the expression “European Licence” means a licence granted pursuant to any action taken by an EEA State for the purposes of implementing the 2012 Directive.

(6) Where the Department has suspended or revoked a European licence solely on the grounds of the non-compliance by the railway undertaking with the requirements of financial fitness specified in Schedule 4 but the Department considers that there is a realistic prospect of a satisfactory financial restructuring of the undertaking taking place within a reasonable period of time, it may grant to the undertaking a temporary European licence pending such financial restructuring.

(7) A temporary European licence under paragraph (6) shall not be granted—

- (a) where the Department considers that safety would be jeopardised, or
- (b) for a period exceeding six months.

(8) Where a railway undertaking to which a European licence has been granted has either ceased the operations to which the licence relates for a continuous period of six months or, subject to paragraph (9), has not commenced such operations within six months of the date of such grant, then the Department may either require the railway undertaking to resubmit its European licence to the Department for approval or suspend the European licence.

(9) When making an application for a European licence, or where the Department has required a railway undertaking to resubmit its European licence in pursuance of paragraph (8) on the grounds that the railway undertaking has not commenced such operations, the railway undertaking shall be entitled to request that a period longer than six months be granted in which it can commence operations, taking into account the specific nature of the services to be provided.

(10) In the event of a change affecting the legal situation of a railway undertaking, in particular following a change in the control or ownership of the railway undertaking as a result of a merger with or take-over by another undertaking, the Department may require the railway undertaking to submit the European licence to the Department for approval.

(11) Where a European licence is submitted for approval pursuant to paragraph (10), the railway undertaking may continue operations whilst its European licence is under review unless the Department decides that safety is jeopardised by the change referred to in paragraph (10).

(12) If the Department decides that safety is jeopardised by that change, it shall notify the railway undertaking of its decision and of the grounds for it.

(13) When a railway undertaking intends significantly to change or extend its activities from those in respect of which a European licence was granted to it, the railway undertaking shall submit its European licence to the Department for review.

(14) When the Department amends, suspends or revokes a European licence it shall forthwith inform the European Railway Agency of such an amendment, suspension or revocation.

## **Review**

**47.**—(1) The Department must, from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusion of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Department must, so far as is reasonable, have regard to how the 2012 Directive (2012/34/EU), (which is implemented by means of these Regulations) is implemented in other EEA states.

(3) The report must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they would be achieved with a system which imposes less regulation.

(4) The first report under this regulation must be published before the end of a period of 5 years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding 5 years.