

## **Explanatory Memorandum To**

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

**S.R. 2016 No. 420**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department for Infrastructure to accompany The Railways Infrastructure (Access, Management & Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016 which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under powers conferred by Section 2(2) of the European Communities Act 1972 and is subject to negative resolution procedure before the Assembly.

#### **2. Purpose**

- 2.1 The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016 (the 2016 Regulations) are being introduced to revoke and replace the existing 2005 Regulations (the Railways Infrastructure (Access Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 (S.R. 2005 No. 537).
- 2.2 The 2016 Regulations implement the requirements of European Commission Directive 2012/34/EU establishing a single European railway area aimed at the provision of the freedom of access to the rail network across Europe.

#### **3. Background**

- 3.1 The Railways Infrastructure (Access Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 Regulations implemented the requirements of:

- Council Directive 91/440/EEC on the development of the Communities railways, as amended by Directive 2001/12/EC and Directive 2004/51/EC;
- Council Directive 2001/14/EC on the allocation of infrastructure capacity and the levying of charges for the use of railway infrastructure, as amended by Directive 2004/49/EC dated 29<sup>th</sup> April 2004 on the safety on the Community's railways; and
- Council Directive 95/18/EC on the licensing of railway undertakings, as amended by 2001/13/EC and 2004/49/EC.

3.2 The need for the 2016 Regulations arises from Commission Directive 2012/34/EU which repealed and replaced the three Directives listed above, which were implemented by the 2005 Regulations. The Department is legally bound to implement this Directive.

#### **4. Consultation**

4.1 The Department has completed an extensive consultation exercise in relation to the Statutory Rule. Nine responses were received and the Department has formally responded.

#### **5. Equality Impact**

5.1 As part of the consultation on these legislative proposals the Department has written to all those parties in accordance with the Departments Equality Scheme. The Consultees attention was drawn to the Section 75 criteria and their views sought on any potential impacts that may arise from the implementation of these legislative proposals. The Department has considered the proposed legislative provisions against the Section 75 criteria and the responses to the consultation process and in conjunction with the Equality Unit and the Human Rights Unit has screened out the requirement for an Equality Impact Assessment in relation to these legislative proposals.

## **6. Regulatory Impact**

6.1 The Department has considered the proposed legislative provisions against the criteria for regulatory impact and concluded that this is not required for these legislative proposals.

## **7. Financial Implications**

7.1 Provision has been made in the regulations to enable the Office of Rail and Road (ORR) to levy a charge on Northern Ireland Railways (NIR) for fees and expenses incurred in the discharge of their duties. However the ORR must have regard to any guidance issued by the Department about railways services and to the funds available for that purpose.

## **8. Section 24 of the Northern Ireland Act 1998**

8.1 There are no implications arising in relation to Section 24 of the Northern Ireland Act 1998.

## **9. EU Implications**

9.1 These Regulations implement the requirements of Commission Directive 2012/34/EU.

## **10. Parity or Replicatory Measure**

10.1 Not applicable to this Statutory Rule.

## **11. Additional Information**

11.1 The Provisions of the Regulations are as follows –

**Part 1** contains preliminary provisions.

**Part 2** Regulations 4 to 7 and Schedule 1 grant access rights to operators of international passenger and freight services to the Northern Ireland rail network. It also grants all applicants the right of access to, and the supply of, the services listed in Schedule 1 to these Regulations.

**Part 3** Regulations 8 to 13 impose certain separation requirements between infrastructure managers and railway undertakings. Regulation 10 imposes new provisions relating to independence and accounts where service providers are under direct or indirect control of dominant bodies or firms. Regulation 11 provides for the publication of an indicative railway infrastructure strategy. Regulation 12 requires the drawing up of a business plan by infrastructure managers, and applicants are given the opportunity to comment on a draft. Railway undertakings must also draw up a business plan. Infrastructure managers are placed under a requirement to produce a network statement containing the information set out in Regulation 13, the detailed content of which has been expanded. New provisions in this Part include a requirement that separate accounts are published for rail freight transport businesses and passenger transport businesses respectively, with strengthened provisions regarding the separate treatment of public funds provided for public services.

**Part 4** Regulations 14 to 18, together with Schedule 2, set out the structure for the charging of fees for use of railway infrastructure, and the charging principles. Regulation 14 requires service providers to charge fees which must be used to fund their business. Regulation 15 contains information on infrastructure costs and accounts. Regulation 16 contains details of the performance scheme. Regulation 17 provides further provisions as to the calculation of payments under performance schemes, and allows for a dispute resolution system. Regulation 18 permits a charge to be imposed for regular non-usage of allocated train paths. Schedule 2 sets out principles of access charging and the charges for the supply of such services must not exceed the costs of providing them, plus a reasonable profit. Paragraph 2 of this Schedule requires the infrastructure manager to evaluate the relevance of any mark-up charges for different market segments. Paragraph 7 of this Schedule imposes new principles to apply to performance schemes.

**Part 5** Regulations 19 to 30, together with Schedule 3, set out the framework and timetable for the process of allocating infrastructure capacity. The trading of capacity is prohibited, and allocation in the form of fixed train paths cannot be granted for longer than one timetable period. This part sets out the procedure that must be followed where an element of the railway infrastructure is congested and provides a ‘use it or lose it’ provision in respect of allocated capacity.

**Part 6** Regulations 31 to 37; allocate certain regulatory functions to the Office of Rail and Road (“ORR”). Regulation 32 provides a right of appeal to the ORR for applicants aggrieved with various aspects of the allocation of capacity and the fees charged for the use of that capacity, and requires the ORR to make a decision on such appeals within two months. Regulation 34 requires the ORR to monitor competition in the rail services market and to take appropriate action to deal with undesirable developments in the market either arising out of its own investigations, or from appeals which have been submitted. Regulation 35 gives the ORR the power to audit various bodies, and makes clear that its power to request information under Regulation 36 includes a power to request the information listed in Schedule 5. Regulation 37 provides for cooperation between regulatory bodies.

**Part 7** Regulations 38 to 42, set out the arrangements for enforcement by the regulatory bodies. This includes the power to issue directions when required, the procedures to be followed for such directions and the enforcement arrangements.

**Part 8** Regulations 43 to 47, impose requirements for licensing of railway undertakings; the provision of train services without having a European licence is made a criminal offence (Regulation 43). The Department is appointed as the body to issue European licences (Regulation 44). Applicants for such licences must satisfy requirements as to good repute, professional competence, financial fitness and insurance cover for liabilities (Regulation 46 and Schedule 4). Such licences are valid as long as the licence holder complies with the requirements referred to in Schedule 4 and the requirements to submit the licence for review or approval (Regulation 45). The licence is subject to monitoring and review by the Department, who may suspend or revoke such licences in certain circumstances (Regulation 46).

**Part 9** Regulations 48 to 52, provide for Statements of National Regulatory Provisions (SNRP's). In addition to requiring a European licence, railway undertakings providing services in Northern Ireland will require a Statement of National Regulatory Provisions (Regulation 49). One or more conditions will be included in a SNRP by the Department, but these conditions must be compatible with Community law and must not be discriminatory (Regulation 51). SNRPs may be modified by consent (Regulation 52).

**Part 10** Regulations 53 to 58, contain miscellaneous provisions including the provision of enforcement and penalty powers for the Office of Rail and Road and the Department in relation to the implementation of directions/ orders and compliance with these.

**Schedule 5** stipulates the accounting information required by the Office of Rail and Road.

**Department for Infrastructure**