

2015 No. 786

TRANSPORT

**The Railways Infrastructure (Access and Management)
(Amendment) Regulations 2015**

Made - - - - - *24th March 2015*

Laid before Parliament *26th March 2015*

Coming into force in accordance with regulation 1(2)

The Secretary of State for Transport makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a).

The Secretary of State is a Minister designated(b) for the purposes of that section in relation to measures relating to railways and railway transport.

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Railways Infrastructure (Access and Management) (Amendment) Regulations 2015.

(2) These Regulations enter into force at the same time as the Channel Tunnel (International Arrangements) (Charging Framework and Transfer of Economic Regulation Functions) Order 2015(c).

(3) These Regulations do not extend to Northern Ireland.

Amendment of the Railway Infrastructure (Access and Management) Regulations 2005

2. The Railways Infrastructure (Access and Management) Regulations 2005(d) are amended as follows.

Interpretation

3.—(1) In regulation 3(1)—

(a) after the definition of “applicant”, insert—

““the Channel Tunnel Order” means the Channel Tunnel (International Arrangements) (Charging Framework and Transfer of Economic Regulations Functions) Order 2015;

“the Channel Tunnel charging framework” means the charging framework set out in the Annex to the IGC regulation;”;

and

(a) 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006, section 27(1)(a).

(b) S.I. 1996/266, to which there are amendments not relevant to these Regulations.

(c) S.I. 2015/785.

(d) S.I. 2005/3049, amended by S.I. 2009/1122.

- (b) after the definition of “framework agreement” insert—
““the IGC regulation” has the same meaning as in the Channel Tunnel Order;”.

Scope

4. For regulation 4(7), substitute—
“(7) With the exception of regulations 5, 9(1) and (2) and 29A, these Regulations do not apply to the business of the Concessionaires in respect of any shuttle service for road vehicles.”.

Establishing, determining and collecting the charges

- 5.—(1) In regulation 12(3), after “rail link facility”, insert “or is part of the tunnel system”.
(2) In regulation 12(4), after “where paragraph (3) applies”, insert “by reason of the infrastructure to which the charge relates being a rail link facility”.
(3) After regulation 12(4), insert—
“(4A) Where paragraph (3) applies by reason of the infrastructure to which the charge relates being part of the tunnel system, the infrastructure manager must, subject to paragraph (7)—
(a) establish the specific charging rules in accordance with Article 2 of the Channel Tunnel charging framework;
(b) determine the fees to be charged in accordance with paragraph (5) for the use of the infrastructure in accordance with the Channel Tunnel charging framework, the specific charging rules, and the principles and exceptions set out in Schedule 3; and
(c) collect those fees.”
(4) In regulation 12(5), for the reference “(4)”, substitute “(4A)”.
(5) For paragraph 2(1) of Schedule 3, substitute—
“(1) In order to obtain full recovery of the costs incurred the infrastructure manager, with the approval of the applicable authority, may levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, whilst guaranteeing optimum competitiveness of rail market segments.
(1A) For the purposes of this paragraph, the applicable authority is—
(a) in relation to infrastructure subject to the access charges review, the Office of Rail Regulation;
(b) in relation to a rail link facility, the Secretary of State; and
(c) in relation to infrastructure that is part of the tunnel system, the Office of Rail Regulation.
(1B) For the purposes of this paragraph—
(a) approval given by the Office of Regulation in relation to infrastructure subject to the access charges review must be given under that review; and
(b) approval given by the Secretary of State in relation to a rail link facility must be given through the development agreement.”.

Capacity allocation

- 6.—(1) At the beginning of regulation 16(1), insert “Subject to paragraph (1A),”, and, for the word “Whilst”, substitute “whilst”.
(2) After regulation 16(1), insert—
“(1A) Paragraph (1) does not apply to the allocation of infrastructure capacity within the tunnel system.”

International cooperation

7.—(1) At the beginning of regulation 28(5), insert “Without prejudice to Article 3 of the IGC regulation”.

(2) For regulation 39, substitute—

“**39.** Section 145 of the Act (restriction on disclosure of information) shall have effect in relation to information which—

- (a) relates to the affairs of any individual or to any particular business, and
- (b) has been obtained—
 - (i) under or by virtue of any provision of these Regulations,
 - (ii) in pursuance of functions conferred by regulation 28(5), or
 - (ii) by the regulatory bodies, within the meaning of the IGC regulation, in pursuance of functions conferred by Article 3 of that regulation,

as it has effect in relation to such information obtained under or by virtue of any of the provisions of the Act.”.

(3) After paragraph (gb) of section 145(2) of the Railways Act 1993(a) (general restrictions on disclosure of information), insert—

“(gc) for the purpose of facilitating the carrying out by the Office of Rail Regulation of any of its functions, in respect of the tunnel system (within the meaning of the Channel Tunnel Act 1987(b)), under any instrument made for the purpose of implementing Directive 2012/34/EU of the European Parliament and of the Council dated 21st November 2012 establishing a single European railway area, (c);”.

Enforcement

8.—(1) In regulation 28, after paragraph (3), insert—

“(3A) The Office of Rail Regulation may, 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.

(3B) Without prejudice to the right of any person to make an application to the court under Part 54 of the Civil Procedure Rules 1998(d), it is the duty of any person to whom a direction is given under paragraph (3A) to comply with and give effect to that direction.”.

(2) At the end of regulation 29(2)(d), insert “and the Channel Tunnel charging framework”.

(3) In regulation 31, after “13”, insert “28(2) and (3)”.

(4) In regulation 36(1)(c), after the word “paragraphs”, insert “(2)(a), (4)(b), (4A)(b),”.

(a) 1993 c.43.

(b) 1987 c.53.

(c) OJ No. L 343, 14.12.2012, p. 32.

(d) S.I. 1998/3132. Relevant amending instruments are S.I. 2000/2092, 2002/2058, 2003/364, 2003/3361, 2005/352, 2005/3515, 2006/1689, 2007/3543, 2009/3390, 2010/2577, 2012/2208, 2013/262, 2013/1412, 2014/610 and 2014/1233 and the Constitutional Reform Act 2005 (c.4).

- (5) After regulation 36(1)(d), insert—
“(dd) paragraph (3B) of regulation 28;”.

Signed by authority of the Secretary of State for Transport

24th March 2015

Kramer
Minister of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Railway Infrastructure (Access and Management) Regulations 2005 (“the 2005 Regulations”). They are consequential on the repeal of the Channel Tunnel (International Arrangements) Order 2005 by the Channel Tunnel (International Arrangements) (Charging Framework and Transfer of Economic Regulation Functions) Order 2015 (“the 2015 Order”). The 2015 Order enters into force at the same time as these Regulations.

Following this repeal, these Regulations implement in respect of the Channel Tunnel Directives 91/440/EEC (OJ No. L 237, 24.8.1991, p. 25) and 2001/14/EC (OJ No. L 75, 15.3.2001, p. 29).

Under *regulation 4*, which amends regulation 4(7) of the 2005 Regulation, the scope of the 2005 Regulations is extended to the management of the Tunnel system. The scope of regulations 5 (access rights), 9(1) and (2) (separation between infrastructure management and transport operations) and 29A (regulatory decisions concerning international passenger services) of the 2005 Regulations is also extended to the business of the Concessionaires of the Tunnel in respect of any shuttle service for road vehicles.

Regulation 5(1) to (4) amend regulations 12(3) to (5) of the 2005 Regulations, and insert a new regulation 12(4A). This places on the Concessionaires of the Tunnel the responsibility of establishing the specific charging rules for the Tunnel and determining the fees to be charged for its use, in compliance with those rules. This establishment and determination must comply with the Channel Tunnel charging framework given effect by the 2015 Order and the principles and exceptions set out in Schedule 3 to the 2005 Regulations. *Regulation (5)* amends sub-paragraph (2) of that Schedule. Its effect is that, as part of the fees to be charged for the use of the Tunnel, the Concessionaires are authorised to levy mark-ups, under certain conditions, with the approval of the Office of Rail Regulation (ORR).

Regulation 6 amends regulation 16(1) of the 2005 Regulations, and insert a new regulation 16(1A). This exempts the allocation of infrastructure within the Tunnel from being subject to any framework for allocation of infrastructure capacity that may be established by the ORR under regulation 16(1) of the 2005 Regulations.

Regulation 7 amends regulations 28(5) and 39 of the 2005 Regulations, and section 145(2) of the Railways Act 1993. It makes provisions concerning international cooperation between the ORR and other economic regulatory bodies in the European Union. Since the 2015 Order contains some specific provisions regarding cooperation and coordination between the domestic regulators of the United Kingdom and France with regards to the Tunnel, regulation 7(1), which amends regulation 28(5) of the 2005 Regulations, provides that that provision applies without prejudice to the former. Regulation 7(2) amends regulation 39 of the 2005 Regulations to protect the confidentiality of third party information obtained as part of that cooperation. Nonetheless, that confidentiality (or the confidentiality of any third party information obtained under these Regulations or the Railways Act 1993) does not prevent the information from being used for the purpose of facilitating the carrying out by the Office of Rail Regulation of any of its functions, in respect of the Tunnel, under the relevant EU legislation. That legislation consists of Directives 91/440/EEC and 2001/14/EC, which are already listed in the Act as exceptions to the duty of confidentiality.

Regulation 7(3) also inserts, in the Act, a reference to Directive 2012/34/EU (OJ L 343, 14.12.2012, p. 32). That Directive will soon replace those of the two other Directives. While these Regulations and the 2015 Order make provisions that transpose Directives 91/440 and 2001/14, those provisions will also be able to serve as the transposition of Directive 2012/34/EU, which is referred to in the international instrument implemented by the 2015 Order. The provisions of that Directive on international cooperation are more specific than those made by the earlier Directives.

Regulation 8 deals with enforcement.

By virtue of regulation 28(3) of the 2005 Regulation, the ORR must intervene if negotiations between an applicant and the infrastructure manager about the level of infrastructure charges are likely to contravene the requirements of those Regulations. *Regulation 8(1)* introduces new regulations 28(3A) and (3B). Under these, the ORR has powers to issue binding directions as part of any such intervention, subject to the general right to apply for judicial review of the decisions of public authorities.

Regulation 8(2) amends regulation 29(2)(d) of the 2005 Regulations. This gives an applicant a right of appeal to the ORR against decisions adopted by various industry stakeholders concerning the Channel Tunnel charging framework.

Regulation 8(3) gives the ORR the power to request information in connection with its functions under regulations 28(2) and (3) of the 2005 Regulations.

Regulation 8(4) and (5) amend regulation 36(1)(c) of the 2005 Regulations, and insert a new regulation 36(1)(d). Under regulation 36(1), a number of duties are owed to any person who may be affected by that breach, and are enforceable by civil proceedings, including by the ORR. Following the amendments, these duties include the duty of infrastructure managers to determine the fees to be charged for the use of the infrastructure in accordance with a number of legal requirements, and the duty to comply with a direction issued by the ORR as part of any intervention in a negotiation between an applicant and an infrastructure manager, as mentioned above.

An impact assessment has not been produced in respect of these Regulations, since they have no impact of the costs of business or the voluntary sector. An Explanatory Memorandum, with a transposition note annexed to it, is published alongside these Regulations at www.legislation.gov.uk.

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