
STATUTORY INSTRUMENTS

2016 No. 645

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

PART 3

Infrastructure Management and Independence of Undertakings

Management independence

8.—(1) Railway undertakings which are directly or indirectly owned or controlled by a Member State must, in their management, administration and internal control over administrative, economic and accounting matters, maintain the status of an independent operator and hold, in particular, assets, budgets and accounts which are separate from those of the State.

(2) Subject to the requirements set out in Parts 4 and 5 and Schedules 3 and 4 about the determination of railway infrastructure charges and the allocation of infrastructure capacity, an infrastructure manager must be responsible for its own management, administration and internal control.

Separation of accounts

9.—(1) Any body which incorporates the functions of both infrastructure manager and railway undertaking must—

- (a) prepare and publish separate profit and loss accounts and balance sheets in respect of business relating to the—
 - (i) provision of transport services as a railway undertaking; and
 - (ii) management of railway infrastructure; and
- (b) ensure that public funds granted to such a body are not transferred between that part of the body responsible for the provision of transport services and that responsible for the management of railway infrastructure.

(2) Any body which conducts business activities relating to the provision of both rail freight transport services and passenger transport services must—

- (a) prepare and publish separate profit and loss accounts and balance sheets in respect of each of these business activities;
- (b) account separately for public funds granted for activities relating to the provision of transport services as public service remits in accordance with article 7 of Regulation (EC) No 1370/2007; and
- (c) ensure that public funds granted as described in sub-paragraph (b) are not transferred to activities relating to the provision of other transport services, or any other business.

(3) Accounts for the areas of activity described in paragraphs (1) and (2) must be kept in such a way as to allow for monitoring of—

- (a) the prohibition set out in those paragraphs relating to the transfer of public funds; and
- (b) the use of income from railway infrastructure charges and surpluses from other commercial activities.

Independence of service providers from dominant bodies and firms

10.—(1) Where the service provider of a service described in paragraph 2 of Schedule 2 is under direct or indirect control of a dominant body or firm, it must hold separate accounts from that body or firm, including separate balance sheets and profit and loss accounts.

(2) Where the service provider of a service described in paragraph 2(a), (b), (c), (d), (e), (f) and (i) of Schedule 2 is under direct or indirect control of a dominant body or firm, it must be independent in organisational and decision making terms from that body or firm.

(3) Paragraph (2) does not require the establishment of a separate legal entity to provide such services, and may be fulfilled by the formation of distinct divisions within a single legal entity.

(4) Where any of the services referred to in paragraph (2) are provided, and the operation of the service facility is ensured by either—

- (a) an infrastructure manager; or
- (b) a service provider under the direct or indirect control of an infrastructure manager,

the requirements of paragraphs (1) and (2) are met if regulations 14(9) and 19(4) are complied with.

Indicative railway infrastructure strategy

11.—(1) The Secretary of State must, by 19th December 2019 and after consultation with interested parties, publish an indicative railway infrastructure strategy for England and Wales which must—

- (a) be drafted with a view to meeting future mobility needs in terms of the maintenance, renewal and development needs of the railway infrastructure in England and Wales;
- (b) take into account, as necessary, the general needs of the European Union, including the need to cooperate with neighbouring countries which are not EEA States; and
- (c) be based on sustainable financing.

(2) The Scottish Ministers must, by 19th December 2019 and after consultation with interested parties, publish an indicative railway infrastructure strategy for Scotland which must—

- (a) be drafted with a view to meeting future mobility needs in terms of the maintenance, renewal and development needs of the railway infrastructure in Scotland;
- (b) take into account, as necessary, the general needs of the European Union, including the need to cooperate with neighbouring countries which are not EEA States; and
- (c) be based on sustainable financing.

(3) The strategies referred to in paragraphs (1) and (2) must—

- (a) be in respect of such period as the Secretary of State must determine; and
- (b) be renewed following this period, in respect of successive periods of time, the length and commencement of which the Secretary of State must determine.

(4) The strategies described in paragraphs (1) and (2) are to be known as the indicative railway infrastructure strategy for Great Britain.

(5) In paragraph (2), the term “interested parties” includes the Secretary of State.

Business Plans

12.—(1) Each infrastructure manager must draw up a business plan which is designed for the purpose of ensuring—

- (a) optimal and efficient use, provision and development of the railway infrastructure; and
- (b) financial balance.

(2) The plan referred to in paragraph (1) must—

- (a) include details of investment and financial programmes;
- (b) provide the means by which the objectives set out in paragraph (1) are to be achieved; and
- (c) take into account the strategy referred to in regulation 11 and the financing provided to it.

(3) Before it is approved the infrastructure manager must ensure that applicants known to it and, upon their request, potential applicants have access to the relevant information and are given the opportunity to express their views on the content of the draft business plan regarding the conditions for access and use, and the nature, provision and development of the railway infrastructure.

(4) Each railway undertaking must draw up a business plan, which must include its investment and financing programmes, and which is designed for the purpose of ensuring—

- (a) financial equilibrium; and
- (b) other technical, commercial and financial management objectives.

(5) The plan referred to in paragraph (4) must provide the means by which the objectives set out in that paragraph are to be achieved.

(6) The Office of Rail and Road must, at least once a year, request confirmation that a business plan has been produced in accordance with paragraphs (1) and (4), and each infrastructure manager or, as the case may be, railway undertaking, to whom such a request is made, is under an obligation to comply with that request.

(7) For the purposes of regulation 36, a request by the Office of Rail and Road in accordance with paragraph (6) is to be treated as a request for information.

Network Statement

13.—(1) The infrastructure manager must, following consultation with all interested parties, develop and publish a network statement containing the information relating to its network described in paragraph (4).

(2) Where, by virtue of regulation 14(9) or 19(4) a charging body or, as the case may be, allocation body, is responsible for the functions of the infrastructure manager in Parts 4 or 5, that charging body or allocation body must provide the infrastructure manager with such information as is necessary to enable that infrastructure manager to—

- (a) include the information described in paragraph (4) in the network statement; and
- (b) keep the network statement up to date in accordance with paragraph (7).

(3) A service provider who is not the infrastructure manager must provide the infrastructure manager of the railway infrastructure to which the relevant service facility is connected with such information as is necessary to enable that infrastructure manager to—

- (a) include the information described in paragraph (4)(b) in the network statement; and
- (b) keep the network statement up to date in accordance with paragraph (7).

(4) The information referred to in paragraph (1) is—

- (a) a section setting out the nature of the railway infrastructure which is available to applicants and the conditions of access to it;

- (b) information on access to and charges for the supply of service facilities listed in Schedule 2, including those service facilities which are provided by only one supplier, and including information on technical access conditions, or details of a website where such information is available free of charge in electronic format;
- (c) a description of the charging principles and tariffs, including appropriate details of the charging scheme, framework, methodology, rules and, where applicable, scales used in relation to the application of regulations 14, 16 and 17, of Schedule 3 and of the Channel Tunnel charging framework, as regards both costs and charges;
- (d) information relating to the performance scheme referred to in regulation 16;
- (e) the list of market segments to be published under paragraph 2(9) of Schedule 3, subject to any amendments made by the Office of Rail and Road;
- (f) information about procedures for dispute resolution and appeals relating to matters of access to railway infrastructure and services and to the performance scheme referred to in regulation 16;
- (g) a description of the principles and criteria for the allocation of infrastructure capacity, setting out the general capacity characteristics of the railway infrastructure available and any restrictions on its use, including likely capacity requirements for maintenance;
- (h) the procedures and deadlines in the capacity allocation process and specific criteria employed in that process, in particular—
 - (i) the procedures according to which applicants may request infrastructure capacity from the infrastructure manager;
 - (ii) the requirements governing applicants under regulation 19(17);
 - (iii) the schedule for the application and allocation processes, and the procedures to be followed to request information about that schedule;
 - (iv) the procedures for scheduling planned and unforeseen maintenance work;
 - (v) principles governing the coordination process regarding requests for infrastructure capacity referred to in regulation 23, which must reflect the difficulty of arranging international train paths and the effect that modification of such paths might have on other infrastructure managers;
 - (vi) the dispute resolution procedure established as part of the coordination process in accordance with regulation 23(7);
 - (vii) information about the procedures established in accordance with regulation 20(4) for the allocation of infrastructure capacity at an international level, including information about the membership and methods of operation of any representative groups, and all relevant criteria used to assess and allocate infrastructure capacity which crosses more than one network;
 - (viii) the procedures to be followed and criteria used where railway infrastructure is congested infrastructure, including any priority criteria for the allocation of congested infrastructure set in accordance with regulation 26(5) and (6);
 - (ix) details of restrictions on the use of railway infrastructure;
 - (x) the threshold quota to be applied by the infrastructure manager in requiring a train path to be surrendered under regulation 29(1); and
 - (xi) the conditions relating to previous levels of utilisation of capacity to be taken into account by the infrastructure manager in determining priorities in accordance with regulation 29(3);
- (i) details of any section of railway infrastructure which has been designated for use by specified types of rail services in accordance with regulation 25;

- (j) the measures taken by the infrastructure manager to ensure fair treatment of rail freight services and international services, and in responding to *ad hoc* requests for infrastructure capacity;
- (k) a template form for requests for capacity and detailed information about the allocation procedures for international train paths;
- (l) information relating to applications for —
 - (i) a licence, as published under regulation 6(2) of the Railway (Licensing of Railway Undertakings) Regulations 2005⁽¹⁾;
 - (ii) a rail safety certificate issued in accordance with regulation 7 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006⁽²⁾; and
 - (iii) a Part B certificate issued by the Intergovernmental Commission under Article 39(ii) of the Schedule to the Channel Tunnel (Safety) Order 2007⁽³⁾;

or, as an alternative to the information described in (i) to (iii), a reference to a website where such information is made available free of charge in electronic format;

- (m) a model agreement for the conclusion of a framework agreement between an infrastructure manager and an applicant in accordance with regulation 21; and
- (n) the criteria to determine failure to use capacity published under regulation 17(3)(a).

(5) The information provided under paragraph (4)(a) must be made consistent, on an annual basis with, or must refer to, the register of infrastructure published in accordance with Article 35 of [Directive 2008/57/EC](#) of the European Parliament and of the Council of 17th June 2008 on the interoperability of the rail system within the Community (Recast)⁽⁴⁾.

(6) The information provided under paragraph (4)(b) and (c) must include—

- (a) information on changes to charges referred to in that paragraph already decided upon or foreseen in the next five years, if available; and
- (b) information on charges as well as other relevant information on access applying to services listed in Schedule 2 which are provided only by one supplier.

(7) The infrastructure manager must keep the network statement up to date and modify it as necessary.

(8) The infrastructure manager must publish the network statement in at least two official languages of the European Union.

(9) The infrastructure manager must publish the network statement not less than four months before the deadline for applications for infrastructure capacity as described under paragraph 2(1) of Schedule 4.

(10) Any fee charged by the infrastructure manager for the provision, on request, of a copy of the network statement must not exceed the cost of producing that copy.

(11) The content of the network statement must be made available free of charge in electronic format on the web portal of the infrastructure manager and must be accessible through a common web portal.

(12) The common web portal referred to in paragraph (11) must be set up by the infrastructure manager in the framework of its cooperation with infrastructure managers from other Member States, in accordance with regulations 18 and 20.

(1) [S.I. 2005/3050](#), amended by Part 7 of these Regulations. There are other amendments not relevant to these Regulations.

(2) [S.I. 2006/599](#), amended by [S.I. 2015/1682](#), Schedule, Part 2, paragraph 6(d).

(3) [S.I. 2007/3531](#), substituted by [S.I. 2013/407](#), article 2(1) and (8) and the Schedule. There have been other amendments to this provision which are not relevant to these Regulations.

(4) O.J. No. L 191, 18.7.08, p.1, to which there are amendments not relevant to these Regulations.

(13) If the information required under paragraph (2) or (3) is not provided to the satisfaction of the infrastructure manager, the infrastructure manager may refer the matter to the Office of Rail and Road for a determination as to whether additional information must be supplied.

(14) Where a matter is referred to the Office of Rail and Road in accordance with paragraph (13), it is the duty of that Office to make the determination within such period as is reasonable in all the circumstances, and any such determination is binding on all parties.