
STATUTORY INSTRUMENTS

2016 No. 645

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

PART 8

Miscellaneous

Statutory authority to run trains

40. Any applicant granted access rights under these Regulations is, if and to the extent that it would not, apart from this regulation, have statutory authority to run trains over any track in exercise of such rights, taken to have statutory authority to do so.

Civil proceedings

41.—(1) Any obligation which a person owes under or arising from—

- (a) regulation 5;
- (b) regulation 6;
- (c) regulation 8;
- (d) regulation 9;
- (e) regulation 10;
- (f) paragraphs (1) to (5) of regulation 12;
- (g) paragraphs (2)(a), (5)(b), (9), and (13) of regulation 14;
- (h) paragraph (5) of regulation 15;
- (i) paragraph (4), (14) and (16)(c) of regulation 19;
- (j) paragraphs (4), (5), and (6) of regulation 21;
- (k) paragraph (8) of regulation 31;
- (l) paragraph (11) of regulation 32;
- (m) paragraph (12) of regulation 33; or
- (n) paragraph (4) of regulation 34,

is a duty owed to any person who may be affected by a breach of that obligation and is actionable by any such person who sustains loss, damage or injury caused by the breach at the suit or instance of that person.

(2) In any proceedings brought against an infrastructure manager, railway undertaking, service provider, allocation body, charging body or applicant under paragraph (1), it is a defence for it to prove that it took all reasonable steps and exercised all due diligence to avoid the breach of duty.

(3) Without prejudice to the right which any person may have by virtue of paragraph (1) to bring civil proceedings in respect of any breach of duty, the obligation to comply is enforceable by civil proceedings by the Office of Rail and Road for an injunction or for interdict or any other relief.

Making of false statements etc.

42.—(1) If any person, in giving any information or making any application under or for the purposes of any provision of these Regulations, makes any statement which that person knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, that person is guilty of an offence and liable—

- (a) on summary conviction in England and Wales, to a fine;
- (b) on summary conviction in Scotland, to a fine not exceeding the statutory maximum;
- (c) on conviction on indictment, to a fine.

(2) The consent of the Secretary of State or the Director of Public Prosecutions is required before proceedings are instituted in England or Wales in respect of an offence under this regulation.

Offences by bodies corporate and Scottish partnerships

43.—(1) Where an offence under these Regulations has been committed by a body corporate and it is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, that person as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with that member's functions of management as if the member were a director of the body corporate.

(3) Where a Scottish partnership is guilty of an offence under these Regulations in Scotland and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, or any person who was purporting to act in any such capacity, that partner as well as the partnership is guilty of that offence and liable to be proceeded against and punished accordingly.

Restriction on disclosure of information

44. Section 145 of the Act⁽¹⁾ (general restrictions on disclosure of information) has 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; or
 - (ii) by the regulatory bodies, within the meaning of the IGC regulation, in pursuance of functions conferred by Article 3 of that regulation,

(1) 1993 c. 43. Section 145 is amended by the Competition Act 1998 (c. 41), Schedule 10, paragraph 15(10); the Transport Act 2000 (c. 38), Schedule 27, paragraphs 17, 41(1) and (3); the Enterprise Act 2002 (c. 40), Schedule 25, paragraph 30(1) and (14)(c)(ii); the Railways Act 2005 (c. 14), Schedule 11, paragraphs 1 and 16(2) and Schedule 13, Part 1; S.I. 2005/3049, Schedule 1, Part 1, paragraph 4(e)(ii); S.I. 2005/3050, Schedule 1, Part 1, paragraph 3(1) and (9); S.I. 2009/1122, Schedule, paragraph 1(1) and (2)(a); S.I. 2010/439, Schedule, Part 1, paragraph 6(1) and (6); S.I. 2011/1043, article 6(3) and (1)(e); S.I. 2014/892, Schedule 1, Part 2, paragraphs 99, 105(1) and (4) and 109(1) and (5); S.I. 2015/786, regulation 7(3); and S.I. 2015/1682, Schedule, Part 1, paragraphs 1(aaa) and 10(oo)(ii). There are other amendments which are not relevant to these Regulations.

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

Breaches of duty outside the United Kingdom

45.—(1) For the purpose of determining whether a breach of the duty imposed by regulation 9 has occurred, it is immaterial that the relevant acts or omissions occurred outside the United Kingdom if, when they occurred, the person—

- (a) was a United Kingdom national; or
- (b) was a body incorporated under the law of any part of the United Kingdom; or
- (c) was a person (other than a United Kingdom national or such a body) maintaining a place of business in the United Kingdom.

(2) In this regulation “United Kingdom national” means an individual who is—

- (a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen;
- (b) a person who under the British Nationality Act 1981(2) is a British subject; or
- (c) a British protected person (within the meaning of that Act).

Review

46.—(1) The Secretary of State must from time to time—

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

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive (which is implemented in part by 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 could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five 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 five years.

(2) 1981 c. 61.