
STATUTORY INSTRUMENTS

2005 No. 3049

**The Railways Infrastructure (Access
and Management) Regulations 2005**

PART 7

MISCELLANEOUS

Statutory authority to run trains

33. Any applicant granted transit, or access and transit, rights under these Regulations shall, 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, be taken to have statutory authority to do so.

Application of enactments concerning railways

34. Paragraphs 2 (disapplication of enactments in the case of Concessionaires and through service operators), 3 (extension of enactments in relation to through service operators) and 4 (modification of enactments applying to Concessionaires and through service operators) of Schedule 6 to the Channel Tunnel Act 1987(1) shall apply to international groupings and railway undertakings, other than the Concessionaires and the British Railways Board, in relation to the provision of international services in exercise of access or transit rights under these Regulations who are not through service operators within the meaning of that Schedule as they apply to those who are.

International Groupings

35. In the event of a contravention of, or a refusal or failure to comply with, a requirement or prohibition imposed by these Regulations on an international grouping—

- (a) where the contravention, or refusal or failure to comply, would be an offence under these Regulations each railway undertaking comprised in the grouping shall be guilty of the offence and liable to be proceeded against and punished accordingly unless that undertaking proves that the contravention, refusal or failure occurred without the consent or connivance of that undertaking and that the undertaking exercised all due diligence to prevent that contravention, refusal or failure; and
- (b) where a civil remedy would be available to any person in respect of any loss, damage or injury caused by the contravention, or refusal or failure to comply, each railway undertaking comprised in the grouping shall be jointly and severally liable in respect of such loss, damage or injury.

(1) 1987 c. 53. Paragraph 2 of Schedule 6 was amended by the Railways Act 1993 (c. 43), section 152, schedule 12 paragraph 27, and schedule 14; Paragraph 3 of Schedule 6 was amended by the Transport and Works Act 1992 (c. 42), section 68 and Part 1 of Schedule 4, and the Inquiries Act 2005 (c. 12), section 49(2) and Schedule 3.

Civil proceedings

36.—(1) The obligation to comply with—

- (a) regulation 8;
- (b) regulation 9;
- (c) paragraphs (7) and (12) of regulation 12;
- (d) paragraphs (3), (10), and (11)(c) of regulation 16; or
- (e) paragraph (11) of regulation 29,

shall be a duty owed to any person who may be affected by a breach of that duty and shall be 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, international grouping, railway undertaking, allocation body, charging body or applicant under paragraph (1), it shall be 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 shall be enforceable by civil proceedings by the Office of Rail Regulation for an injunction or for interdict or any other relief.

Making of false statements etc.

37.—(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 he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he is guilty of an offence and shall be liable—

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

(2) No proceedings shall be instituted in England or Wales in respect of an offence under this regulation except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

Offences by bodies corporate and Scottish partnerships

38.—(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, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he 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, he as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Restriction on disclosure of information

39. Section 145 of the Act (restriction on disclosure of information) shall have effect in relation to information which has been obtained under or by virtue of any provision of these Regulations and

which relates to the affairs of any individual or to any particular business as it has effect in relation to such information obtained under or by virtue of any of the provisions of that Act.

Offences outside the United Kingdom

40.—(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).

(2) 1981 c. 61.