

SCHEDULE 3

Regulation 12

ACCESS CHARGING

Principles of access charging

- 1.—(1) The infrastructure manager must ensure that the application of the charging scheme—
 - (a) complies with the rules set out in the network statement produced in accordance with regulation 11; and
 - (b) results in equivalent and non-discriminatory charges for different railway undertakings that perform services of an equivalent nature in a similar part of the market.
- (2) The calculation of the fee may in particular take into account the mileage, composition of the train and any specific requirements in terms of such factors as speed, axle load and the degree or period of utilisation of the infrastructure.
- (3) Except where specific arrangements are made in accordance with paragraph 3, the infrastructure manager must ensure that the charging system in use is based on the same principles over the whole of his network.
- (4) The charges for the minimum access package and track access to service facilities referred to in paragraphs 1 and 2 of Schedule 2 shall be set at the cost that is directly incurred as a result of operating the train service.
- (5) With the exception of sub-paragraphs (6) and (9), the supply of services referred to in paragraph 2 of Schedule 2 shall not be subject to the principles set out in this paragraph.
- (6) In setting the charge for the supply of services referred to in sub-paragraph (5), account must be taken of the competitive situation of rail transport.
- (7) If the additional or ancillary services referred to in paragraphs 3 and 4 of Schedule 2 are offered by only one supplier the charge imposed for the supply of those services must relate to the cost of providing the service, calculated on the basis of the actual level of use.
- (8) The infrastructure charge may include a charge to reflect the scarcity of capacity of the identifiable segment of the infrastructure during periods of congestion.
- (9) The charges referred to in sub-paragraphs (4) and (8) may be averaged over a reasonable spread of train services and times, but the relative magnitudes of the infrastructure charges must be related to the costs attributable to the services.

Exceptions to the charging principles

- 2.—(1) In order to obtain full recovery of the costs incurred the infrastructure manager, with the approval of the Office of Rail Regulation under the access charges review or, in the case of a rail link facility, the Secretary of State through the development agreement, may levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, whilst guaranteeing optimum competitiveness, in particular in respect of international rail freight.
 - (2) The effect of sub-paragraph (1) must not be to exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear.
 - (3) The charging system shall respect the productivity increases achieved by applicants.
- 3.—(1) Subject to sub-paragraph (2), for specific investment projects completed—
 - (a) since 15th March 1988; or
 - (b) following the coming into force of these Regulations,

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the infrastructure manager may set or continue to set higher charges on the basis of the long-term costs of the project.

(2) For sub-paragraph (1) to apply—

- (a) the effect of the higher charges must be to increase the efficiency or cost-effectiveness of the project; and
- (b) the project could not otherwise have been undertaken without the prospect of such higher charges.

(3) A charging arrangement to which sub-paragraph (1) applies may incorporate agreements on the sharing of the risk associated with new investments.

4.—(1) An infrastructure manager's average and marginal charges for equivalent uses of his infrastructure must be comparable and comparable services in the same market segment must be subject to the same charges.

(2) The network statement produced by the infrastructure manager in accordance with regulation 11 must demonstrate that the charging system meets the requirements in paragraph (1) in so far as this can be done without the disclosure of commercially confidential information.

5. If an infrastructure manager intends to modify the essential elements of the charging system referred to in paragraph 2 that infrastructure manager must make such modifications public at least three months in advance of the modification taking effect.

Discounts

6.—(1) Subject to the provisions of articles 81, 82, 86 and 87 of the Treaty, and paragraph 1(4) of this Schedule, any discount on the charges levied on a user of railway infrastructure by the infrastructure manager, for any service, must comply with the principles set out in this paragraph.

(2) Except where sub-paragraph (3) applies, discounts shall be limited to the actual saving of the administrative cost to the infrastructure manager and, in determining the level of discount to be applied, no account may be taken of cost savings already incorporated in the charge levied.

(3) The infrastructure manager may introduce schemes available to all users of the infrastructure, with reference to specified traffic flows, granting time limited discounts to encourage the development of new rail services, or encouraging the use of considerably under-utilised lines.

(4) The discounts available must be in accordance with the access charges review or, in the case of a rail link facility, the development agreement.

(5) Discounts may relate only to charges levied for a specified infrastructure section.

(6) Similar discount schemes must be applied to similar services.