

## SCHEDULE 1

Regulation 2(4)

### AMENDMENTS AND REPEALS

#### PART 1

##### AMENDMENTS AND REPEALS OF PRIMARY LEGISLATION

###### **The Parliamentary Commissioner Act 1967**

1. In Schedule 2 to the Parliamentary Commissioner Act 1967(1) (departments and authorities subject to investigation), omit the entry relating to the International Rail Regulator.

###### **The House of Commons Disqualification Act 1975**

2. In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975(2) (offices disqualifying for membership), omit the entry relating to the International Rail Regulator.

###### **The Northern Ireland Assembly Disqualification Act 1975**

3. In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975(3) (offices disqualifying for membership), omit the entry relating to the International Rail Regulator.

###### **Railways Act 1993**

4. In the Railways Act 1993(4)—

- (a) in section 17 (access agreements: directions requiring facility owners to enter into contracts for the use of their railway facilities) omit—
  - (i) the words “or an international railway access contract” in subsection (1)(b);
  - (ii) subsection (1)(d) and “or” preceding it; and
  - (iii) the definitions of “the Directives”, “implementing regulation” and “international railway access contract” in subsection (7);
- (b) at the end of section 17(1)(b) insert “or”;
- (c) in section 18 (access agreements: contracts requiring the approval of the Office of Rail Regulation) omit—
  - (i) subsection (3)(b) and “or” preceding it; and
  - (ii) in subsection (8), the words ““international railway access contract””;
- (d) in section 22A (directions to require amendment permitting more extensive use)—
  - (i) in subsection (4)(b) omit the words “or an international railway access contract”; and
  - (ii) in subsection (7)(a) for the words ““international railway access contract” and “lease” have” substitute ““lease” has”;

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(1) 1967 c. 13, the reference to the International Rail Regulator was inserted by S.I. 1998/1340, see regulation 9(2) and paragraph 7 of Schedule 2.

(2) 1975 c. 24, the reference to the International Rail Regulator was inserted by S.I. 1998/1340, see regulation 9(2) and paragraph 8 of Schedule 2.

(3) 1975 c. 25, the reference to the International Rail Regulator was inserted by S.I. 1998/1340, see regulation 9(2) and paragraph 8 of Schedule 2.

(4) 1993 c. 43, the amendments made to these sections which are relevant to these Regulations are that section 17(1) was amended by the Railways and Transport Safety Act 2003(c. 20.) section 16(5), schedule 2 Part 1 paragraphs 1 and 3(a), and section 17(1) and (7) by S.I. 1998/1340, regulation 21(5) - (8); section 145(2)(g) was amended by S.I. 1998/1340 regulation 21(10).

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(e) in section 145(general restrictions on disclosure of information)—

(i) omit subsection (2)(g); and

(ii) before subsection (2)(h), insert—

“(gb) for the purpose of facilitating the carrying out by the Office of Rail Regulation of any of its functions under any instrument made for the purpose of implementing Council Directive [91/440/EEC](#) dated 29 July 1991 on the development of the Community’s railways, as amended by Directive [2001/12/EC](#) dated 26 February 2001 and Directive [2004/51/EC](#) dated 29 April 2004, both of the European Parliament and of the Council, and Directive [2001/14/EC](#) dated 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure, as amended by Directive [2004/49/EC](#) dated 29 April 2004 on safety on the Community’s railways, both of the European Parliament and of the Council;”.

### **The Greater London Authority Act 1999**

**5.** In the Greater London Authority Act 1999(5), in section 235 (restrictions on the disclosure of information)—

(a) in subsection (2)(b), for “or the Railways Act 2005” substitute—

“,the Railways Act 2005 or any subordinate legislation made for the purpose of implementing—

(i) Council Directive [91/440/EEC](#) dated 29 July 1991 on the development of the Community’s railways, as amended by Directive [2001/12/EC](#) dated 26 February 2001 and Directive [2004/51/EC](#) dated 29 April 2004, both of the European Parliament and of the Council; or

(ii) Directive [2001/14/EC](#) dated 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure, as amended by Directive [2004/49/EC](#) dated 29 April 2004 on safety on the Community’s railways, both of the European Parliament and of the Council;”;

(b) omit subsection 2(h).

### **The Channel Tunnel Rail Link Act 1996**

**6.** In the Channel Tunnel Rail Link Act 1996(6), omit section 22 (restriction of functions in relation to competition use).

### **Railways and Transport Safety Act 2003**

**7.** In Schedule 3 to the Railways and Transport Safety Act 2003(7) (abolition of Rail Regulator, savings, &c), omit paragraph 6.

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(5) [1999 c. 29](#). Section 235(2)(b) was amended by the Transport Act [2000 \(c. 38.\)](#), section 215 and Schedule 16 paragraphs 58, and 66(1) and (2), and by the Railways Act [2005 \(c. 14.\)](#), section 59(1) and Schedule 12 paragraph 14(1) and (5)(b). There are other amendments to this section which are not relevant to these Regulations.

(6) [1996 c. 61](#). Section 22 was amended by the Enterprise Act [2002 \(c. 40.\)](#), section 278, schedule 25, paragraphs 35(1), (3)(a) and (c) and Schedule 26; S.I. [2003/1398](#), article 2 and Schedule paragraph 24(1) and (2); the Railways and Transport Safety Act [2003 \(c. 20.\)](#), section 16(5) and Schedule 2; S.I. [2004/1261](#) regulation 5 and Schedule 2 paragraph 8.

(7) [2003 c. 20](#).

## PART 2

### REPEAL OF SECONDARY LEGISLATION

#### Scottish Parliament (Disqualification) Order 2003

8. In Part I of Schedule 1 to the Scottish Parliament (Disqualification) Order 2003<sup>(8)</sup>, omit the words “The International Rail Regulator”.

#### SCHEDULE 2

Regulation 7

##### SERVICES TO BE SUPPLIED TO APPLICANTS

1. The minimum access package referred to in regulation 7(1) shall comprise—
  - (a) handling of requests for infrastructure capacity; and
  - (b) the right to utilise such capacity as is granted and, in particular—
    - (i) the right to use such running track points and junctions as are necessary to utilise that capacity;
    - (ii) train control, including signalling, train regulation, dispatching and the communication and provision of information on train movements; and
    - (iii) all other information as is necessary to implement or to operate the service for which capacity has been granted.
2. Track access to services facilities and the supply of services referred to in regulation 7(1) and (4) shall comprise—
  - (a) where available, the use of electrical supply equipment for traction current;
  - (b) refuelling facilities;
  - (c) passenger stations, including buildings and other facilities;
  - (d) freight terminals;
  - (e) marshalling yards;
  - (f) train formation facilities;
  - (g) storage sidings; and
  - (h) maintenance and other technical facilities.
3. The additional services referred to in regulation 7(5) may comprise—
  - (a) traction current;
  - (b) pre-heating of passenger trains;
  - (c) the supply of fuel, shunting and all other services provided at the access services facilities referred to in paragraph (2); and
  - (d) tailor-made contracts for—
    - (i) control of the transport of dangerous goods; and
    - (ii) assistance in running abnormal trains.
4. The ancillary services referred to in regulation 7(6) may comprise—

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<sup>(8)</sup> S.I. 2003/409.

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- (a) access to the telecommunication network;
- (b) the provision of supplementary information; and
- (c) technical inspection of rolling stock.

## 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,

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.

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## SCHEDULE 4

Regulations 16(5) and 19(2)

### TIMETABLE FOR THE ALLOCATION PROCESS

#### **Date of timetable change**

1.—(1) Subject to sub-paragraph (2) the working timetable must be established once per calendar year, and the change of working timetable must take place at midnight on the second Saturday in December.

(2) Where a change or adjustment to the working timetable is carried out after the winter, in particular to take account, where appropriate, of changes in regional passenger traffic timetables, it must take place at midnight on the second Saturday in June.

(3) Further changes to the working timetable may be made at such other intervals as are required.

(4) The infrastructure manager may agree different dates to those stipulated in sub-paragraphs (1) and (2) and, in this case, must inform the European Commission if international traffic may be affected.

#### **Timetable for the production of the working timetable**

2.—(1) The final date for receipt of requests for capacity to be incorporated into the working timetable must be no more than 12 months in advance of the entry into force of the working timetable described in paragraph 1.

(2) No later than 11 months before the working timetable comes into force, the infrastructure managers must ensure that provisional international train paths have been established in co-operation with other relevant infrastructure managers or, as the case may be, allocation bodies, in accordance with regulation 17.

(3) Infrastructure managers must ensure that, so far as possible, provisional international train paths established in accordance with sub-paragraph (2) are adhered to during the subsequent allocation process.

(4) No later than four months after the deadline for submission of bids by applicants, the infrastructure manager must prepare a draft working timetable.