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STATUTORY INSTRUMENTS

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**2005 No. 3050**

The Railway (Licensing of Railway Undertakings) Regulations 2005

**PART 2**

EUROPEAN LICENCES

**Prohibition of unlicensed provision of services**

5.—(1) Where a person is a railway undertaking to which these Regulations apply, that person shall not provide a train service in Great Britain unless he is authorised to do so by a European licence which is appropriate for that train service, and any person who provides such a service without such a licence shall be guilty of an offence.

(2) Any person who is guilty of an offence under this regulation shall be liable—

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

(3) No proceedings shall be instituted in England and Wales in respect of an offence under this regulation except by or on behalf of the ORR.

(4) In this regulation the expression “European licence” includes a licence granted pursuant to any action taken by an EEA State for the purpose of implementing the 1995 Directive.

**Appointment of licensing authority and grant of European licences**

6.—(1) The ORR is designated as the body responsible for granting European licences.

(2) The ORR shall determine and publish on its website the procedures for the granting of European licences and inform the Commission of those procedures.

(3) Subject to and in accordance with these Regulations, the ORR shall grant a European licence to a railway undertaking if that undertaking—

- (a) is established in Great Britain, and
- (b) makes an application to the ORR in accordance with the published procedures.

(4) A European licence may authorise the provision of train services generally or be restricted to particular types of service specified in the licence.

(5) An applicant shall submit with his application such application fee as the ORR may reasonably require and such information, specified in the published procedures referred to in paragraph (3)(b), as the ORR reasonably requires in order to be satisfied that the applicant satisfies the requirements referred to in Schedule 2.

(6) At any time after submitting the application the applicant shall submit such further information as the ORR may reasonably require in connection with the application.

(7) The ORR shall grant a European licence if, and only if, it is satisfied before the start of the applicant's activities that the applicant will be able at any time to satisfy the requirements referred

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to in Schedule 2 as to good repute, financial fitness, professional competence and insurance cover for civil liabilities.

(8) An application for a European licence shall be determined by the ORR as soon as possible and in any event within three months of receipt of all the information referred to in paragraphs (5) and (6).

(9) In respect of each application for a European licence the ORR shall give notice stating—

- (a) that the applicant has made an application for a European licence;
- (b) the name of the applicant and the address of its registered or principal office; and
- (c) a summary of the activities which the applicant wishes to carry out pursuant to the European licence.

(10) A notice under paragraph (9) shall be given by publishing the notice in such manner as the ORR considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the European licence.

(11) The ORR shall inform the applicant of its decision and, where it refuses to grant a European licence, the refusal shall state the reasons for its decision.

(12) When the ORR grants a European licence in accordance with this regulation it shall forthwith inform the European Commission of the grant.

(13) Any sums received by the ORR under this regulation shall be paid into the Consolidated Fund.

(14) Schedule 2 (qualifications for European licence) shall have effect.

### **Validity of European licences**

7.—(1) A European licence shall, unless previously revoked or surrendered in accordance with any provision in these Regulations or the licence, continue in force as long as the ORR is satisfied that the railway undertaking concerned continues—

- (a) to satisfy the requirements referred to in Schedule 2 as to good repute, financial fitness, professional competence and insurance cover for civil liabilities, and
- (b) to submit the licence to the ORR for review or approval when so required under regulation 8.

(2) A European licence may incorporate specific provisions governing the suspension or revocation of the licence.

### **Monitoring, suspension and revocation of European licences**

8.—(1) Subject to paragraph (5), this regulation applies to a railway undertaking to which a European licence has been granted by the ORR.

(2) If at any time the ORR considers that there is serious doubt whether a railway undertaking complies with a requirement referred to in Schedule 2, it may take such steps as are necessary to enable it to determine whether or not the undertaking does so comply.

(3) If, having taken the steps referred to in paragraph (2), the ORR is satisfied that a railway undertaking does not comply with any such requirement, it shall revoke the European licence held by the railway undertaking or suspend it.

(4) The ORR shall revoke a European licence if—

- (a) proceedings have been commenced for the winding up of a railway undertaking on the grounds that the undertaking is unable to pay its debts, or

- (b) an application for a railway administration order has been made in relation to the railway undertaking under section 60 of the 1993 Act on the grounds that the undertaking is or is likely to be unable to pay its debts,

and the ORR is satisfied that there is no realistic prospect of satisfactory financial restructuring of the undertaking within a reasonable period of time.

(5) Where the ORR is satisfied that there is serious doubt whether a railway undertaking to which a European licence has been granted by a licensing authority other than itself complies with any requirement of the 1995 Directive, it shall without delay so notify that licensing authority; and in this paragraph, the expression “European licence” means a licence granted pursuant to any action taken by an EEA State for the purpose of implementing the 1995 Directive.

(6) Where the ORR has suspended or revoked a European licence solely on the grounds of the non-compliance by the railway undertaking with the requirements of financial fitness specified in Schedule 2, the ORR may grant to the undertaking a temporary European licence pending the re-organisation of the railway undertaking.

(7) A temporary European licence under paragraph (6) shall not be granted—

- (a) where the ORR considers that safety would be jeopardised, or
- (b) for a period exceeding six months.

(8) Where a railway undertaking to which a European licence has been granted has either ceased the operations to which the licence relates for a continuous period of six months or, subject to paragraph (9), has not commenced such operations within six months of the date of such grant, then the ORR may either require the railway undertaking to resubmit its licence to the ORR for approval or suspend the licence.

(9) When making an application for a European licence, or where the ORR has required a railway undertaking to resubmit its European licence in pursuance of paragraph (8) on the grounds that the railway undertaking has not commenced such operations, the railway undertaking shall be entitled to request that a period longer than six months be granted in which it can commence operations, taking into account the specific nature of the services to be provided.

(10) In the event of a change affecting the legal situation of a railway undertaking, in particular following a change in the control or ownership of the railway undertaking as a result of a merger with or take-over by another undertaking, the ORR may require the railway undertaking to submit the European licence to the ORR for approval.

(11) Where a European licence is submitted for approval pursuant to paragraph (10), the railway undertaking may continue operations whilst its licence is under review unless the ORR decides that safety is jeopardised by the change referred to in paragraph (10).

(12) If the ORR decides that safety is jeopardised by that change, it shall notify the railway undertaking of its decision and of the grounds for it.

(13) When a railway undertaking intends significantly to change or extend its activities from those in respect of which a European licence was granted to it, the railway undertaking shall submit its licence to the ORR for review.

(14) When the ORR amends, suspends or revokes a European licence it shall forthwith inform the European Commission of such amendment, suspension or revocation.

**Status:**

Point in time view as at 28/11/2005.

**Changes to legislation:**

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