

## STATUTORY INSTRUMENTS

### 2005 No. 3050

## The Railway (Licensing of Railway Undertakings) Regulations 2005

### PART 2

#### [<sup>F1</sup>Railway Undertaking] LICENCES

**F1** Words in Pt. 2 heading substituted (31.12.2020) by The Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/700), regs. 1(2), 6 (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)

#### Prohibition of unlicensed provision of services

5.—(1) [<sup>F2</sup>Subject to paragraph (1A),] 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 [<sup>F3</sup>railway undertaking] 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.

[<sup>F4</sup>(1A) A person that is a railway undertaking to which these Regulations apply may provide a Channel Tunnel service if the person holds a European licence that would be appropriate for that service if the United Kingdom were an EEA state.]

(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.

<sup>F5</sup>(4) .....

- F2** Words in reg. 5(1) inserted (31.1.2022 at 11.00 p.m.) by The Railway (Licensing of Railway Undertakings) (Amendment) Regulations 2021 (S.I. 2021/1105), regs. 1(3), 5(a)
- F3** Words in reg. 5(1) substituted (31.12.2020) by The Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/700), regs. 1(2), 7(a) (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Reg. 5(1A) inserted (31.1.2022 at 11.00 p.m.) by The Railway (Licensing of Railway Undertakings) (Amendment) Regulations 2021 (S.I. 2021/1105), regs. 1(3), 5(b)
- F5** Reg. 5(4) omitted (31.12.2020) by virtue of The Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/700), regs. 1(2), 7(b) (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)

## **Appointment of licensing authority and grant of [<sup>F6</sup>railway undertaking] licences**

6.—(1) The ORR is <sup>F7</sup>... the body responsible for granting [<sup>F8</sup>railway undertaking] licences.

(2) The ORR shall determine and publish on its website the procedures for the granting of [<sup>F9</sup>railway undertaking] licences <sup>F10</sup>...

(3) Subject to and in accordance with these Regulations, the ORR shall grant a [<sup>F11</sup>railway undertaking] licence to a railway undertaking if that undertaking—

<sup>F12</sup>(a) .....

(b) makes an application to the ORR in accordance with the published procedures.

(4) A [<sup>F13</sup>railway undertaking] licence may authorise the provision of train services generally or be restricted to particular types of service specified in the licence.

<sup>F14</sup>(4A) .....

(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 [<sup>F15</sup>railway undertaking] 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 to in Schedule 2 as to good repute, financial fitness, professional competence and insurance cover for civil liabilities.

(8) An application for a [<sup>F15</sup>railway undertaking] 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 [<sup>F15</sup>railway undertaking] licence the ORR shall give notice stating—

(a) that the applicant has made an application for a [<sup>F15</sup>railway undertaking] 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 [<sup>F15</sup>railway undertaking] 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 [<sup>F15</sup>railway undertaking] licence.

(11) The ORR shall [<sup>F16</sup>without delay] inform the applicant of its decision and, where it refuses to grant a [<sup>F15</sup>railway undertaking] licence, the refusal shall state the reasons for its decision.

(12) When the ORR grants a [<sup>F17</sup>railway undertaking] licence in accordance with this regulation it shall forthwith inform the [<sup>F18</sup>Secretary of State] 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 [<sup>F19</sup>railway undertaking] licence) shall have effect.

- F6** Words in reg. 6 heading substituted (31.12.2020) by The Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/700), regs. 1(2), **8(2)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in reg. 6(1) omitted (31.12.2020) by virtue of The Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/700), regs. 1(2), **8(3)(a)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F8** Words in reg. 6(1) substituted (31.12.2020) by The Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/700), regs. 1(2), **8(3)(b)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in reg. 6(2) substituted (31.12.2020) by The Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/700), regs. 1(2), **8(4)(a)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in reg. 6(2) omitted (31.12.2020) by virtue of The Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/700), regs. 1(2), **8(4)(b)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F11** Words in reg. 6(3) substituted (31.12.2020) by The Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/700), regs. 1(2), **8(5)(a)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F12** Reg. 6(3)(a) omitted (31.12.2020) by virtue of The Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/700), regs. 1(2), **8(5)(b)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F13** Words in reg. 6(4) substituted (31.12.2020) by The Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/700), regs. 1(2), **8(6)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F14** Reg. 6(4A) omitted (31.12.2020) by virtue of The Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/700), regs. 1(2), **8(7)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F15** Words in reg. 6(7)-(11) substituted (31.12.2020) by The Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/700), regs. 1(2), **8(8)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F16** Words in reg. 6(11) inserted (29.7.2016) by The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (S.I. 2016/645), regs. 1(1), **39(5)(b)** (with reg. 4)
- F17** Words in reg. 6(12) substituted (31.12.2020) by The Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/700), regs. 1(2), **8(9)(a)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F18** Words in reg. 6(12) substituted (31.12.2020) by The Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/700), regs. 1(2), **8(9)(b)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F19** Words in reg. 6(14) substituted (31.12.2020) by The Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/700), regs. 1(2), **8(10)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)

## Validity of [<sup>F20</sup>railway undertaking] licences

7.—(1) A [<sup>F21</sup>railway undertaking] 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 [<sup>F22</sup>railway undertaking] licence may incorporate specific provisions governing the suspension or revocation of the licence.

- F20** Words in reg. 7 heading substituted (31.12.2020) by [The Railway \(Licensing of Railway Undertakings\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/700\)](#), regs. 1(2), **9(a)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F21** Words in reg. 7(1) substituted (31.12.2020) by [The Railway \(Licensing of Railway Undertakings\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/700\)](#), regs. 1(2), **9(b)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F22** Words in reg. 7(2) substituted (31.12.2020) by [The Railway \(Licensing of Railway Undertakings\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/700\)](#), regs. 1(2), **9(b)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)

### Monitoring, suspension and revocation of [<sup>F23</sup>railway undertaking] licences

8.—(1) <sup>F24</sup>... This regulation applies to a railway undertaking to which a [<sup>F25</sup>railway undertaking] licence has been granted by the ORR.

[<sup>F26</sup>(2) The ORR shall take such steps as are necessary to enable it to determine whether or not a railway undertaking complies with a requirement referred to in Schedule 2—

- (a) at regular intervals of at least every 5 years, or
- (b) at any time the ORR considers that there is serious doubt whether the railway undertaking complies with the requirement.]

(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 [<sup>F27</sup>railway undertaking] licence held by the railway undertaking or suspend it.

(4) The ORR shall revoke a [<sup>F28</sup>railway undertaking] 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.

<sup>F29</sup>(5) .....

(6) Where the ORR has suspended or revoked a [<sup>F30</sup>railway undertaking] 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 [<sup>F30</sup>railway undertaking] licence pending the re-organisation of the railway undertaking.

(7) A temporary [<sup>F30</sup>railway undertaking] 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 [<sup>F30</sup>railway undertaking] 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 [<sup>F30</sup>railway undertaking] licence, or where the ORR has required a railway undertaking to resubmit its [<sup>F30</sup>railway undertaking] 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 [<sup>F30</sup>railway undertaking] licence to the ORR for approval.

(11) Where a [<sup>F30</sup>railway undertaking] 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 [<sup>F31</sup>railway undertaking] 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 [<sup>F32</sup>railway undertaking licence] it shall forthwith inform [<sup>F33</sup>the [<sup>F34</sup>Secretary of State]] of such amendment, suspension or revocation.

- F23** Words in reg. 8 heading substituted (31.12.2020) by [The Railway \(Licensing of Railway Undertakings\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/700\)](#), regs. 1(2), **10(2)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F24** Words in reg. 8(1) omitted (31.12.2020) by virtue of [The Railway \(Licensing of Railway Undertakings\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/700\)](#), regs. 1(2), **10(3)(a)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F25** Words in reg. 8(1) substituted (31.12.2020) by [The Railway \(Licensing of Railway Undertakings\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/700\)](#), regs. 1(2), **10(3)(b)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F26** Reg. 8(2) substituted (29.7.2016) by [The Railways \(Access, Management and Licensing of Railway Undertakings\) Regulations 2016 \(S.I. 2016/645\)](#), regs. 1(1), **39(6)(a)** (with reg. 4)
- F27** Words in reg. 8(3) substituted (31.12.2020) by [The Railway \(Licensing of Railway Undertakings\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/700\)](#), regs. 1(2), **10(4)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F28** Words in reg. 8(4) substituted (31.12.2020) by [The Railway \(Licensing of Railway Undertakings\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/700\)](#), regs. 1(2), **10(4)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F29** Reg. 8(5) omitted (31.12.2020) by virtue of [The Railway \(Licensing of Railway Undertakings\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/700\)](#), regs. 1(2), **10(5)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F30** Words in reg. 8(6)-(11) substituted (31.12.2020) by [The Railway \(Licensing of Railway Undertakings\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/700\)](#), regs. 1(2), **10(6)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F31** Words in reg. 8(13) substituted (31.12.2020) by [The Railway \(Licensing of Railway Undertakings\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/700\)](#), regs. 1(2), **10(6)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F32** Words in reg. 8(14) substituted (31.12.2020) by [The Railway \(Licensing of Railway Undertakings\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/700\)](#), regs. 1(2), **10(7)(a)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)

- F33** Words in reg. 8(14) substituted (29.7.2016) by [The Railways \(Access, Management and Licensing of Railway Undertakings\) Regulations 2016 \(S.I. 2016/645\)](#), regs. 1(1), **39(6)(c)** (with reg. 4)
- F34** Words in reg. 8(14) substituted (31.12.2020) by [The Railway \(Licensing of Railway Undertakings\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/700\)](#), regs. 1(2), **10(7)(b)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)

### <sup>F35</sup>**Information sharing by the ORR**

**8A.**—(1) Where the ORR considers that there is serious doubt whether a railway undertaking which holds a European licence and is operating a Channel Tunnel service in reliance on that licence complies with any requirement of the 1995 Directive or Chapter III of the 2012 Directive, it must so notify the French licensing authority.

(2) The ORR must without delay provide information to the French licensing authority in relation to any relevant railway undertaking licence and the railway undertaking to which that licence has been granted—

- (a) on request by the French licensing authority on it notifying the ORR of any concerns or doubts in relation to the validity of that licence;
- (b) if the ORR takes steps in accordance with regulation 8(2)(b) to determine whether or not the railway undertaking to which that licence has been granted complies with a requirement referred to in Schedule 2;
- (c) if the ORR requires that railway undertaking to submit or resubmit its licence for approval in accordance with regulation 8; or
- (d) if the ORR suspends or revokes that licence.

(3) In this regulation “a relevant railway undertaking licence” means a railway undertaking licence in reliance upon which a railway undertaking provides a Channel Tunnel service in France.]

- F35** [Reg. 8A](#) inserted (31.1.2022 at 11.00 p.m.) by [The Railway \(Licensing of Railway Undertakings\) \(Amendment\) Regulations 2021 \(S.I. 2021/1105\)](#), regs. 1(3), **6**

**Changes to legislation:**

There are currently no known outstanding effects for the The Railway (Licensing of Railway Undertakings) Regulations 2005, PART 2.