SCHEDULE 1

Amendments

Regulation 2(2)

PART 1

Amendments to Primary Legislation

The Railway Fires Act 1905

1. In section 4 of the Railway Fires Act 1905 [M1] (definitions and application), for paragraph (c) of the definition of "railway company" substitute—

"(c) who holds a European licence granted pursuant to—

(i) a provision contained in any instrument made for the purpose of implementing Council Directive 1995/18/EC dated 19th June 1995 on the licensing of railway undertakings [M2] or Chapter III of Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast) [M3], or

(ii) any action taken by an EEA State for that purpose.".

Marginal Citations

M1 1905 c. 11; the definition of "railway company" in section 4 was inserted in relation to England, Scotland and Wales by the Railways Act 1993 (c. 43), **Schedule 12**, paragraph 2(2). Paragraph (c) was inserted by S.I. 2005/3050, **Schedule 1**, Part 1, paragraph 1(b).

M2 O.J. No. L 143, 27.6.95, p. 70.

M3 O.J. No. L 343, 14.12.12, p. 32, as corrected by Corrigendum, O.J. L 67, 12.3.2015, p. 32.

The Insolvency Act 1986

2. In Schedule 2A to the Insolvency Act 1986 [M4] (exceptions to prohibition on appointment of administrative receiver: supplementary provisions), for paragraph 10(1)(n) substitute—

"(n) in reliance on a European licence granted pursuant to—

(i) a provision contained in any instrument made for the purpose of implementing Council Directive 1995/18/EC dated 19th June 1995 on the licensing of railway undertakings or Chapter III of Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast), or

(ii) any action taken by an EEA State for that purpose.".

Marginal Citations

M4 1986 c. 45; Schedule 2A was inserted by the Enterprise Act 2002 (c. 40) section 250(2), Schedule 18. Paragraph 10(1)(n) was inserted by S.I. 2005/3050, **Schedule 1**, Part 1, paragraph 2(b). Paragraph 10(2B) of that Schedule was inserted by S.I. 2005/3050, **Schedule 1**, Part 1, paragraph 2(c).

The Railways Act 1993

3.—(1) The Railways Act 1993 [M5] is amended as follows.

(2) In section 6(2) (prohibition on unauthorised operators of railway assets), for the definition of "European licence"[M6] substitute—

""European licence" means a licence granted pursuant to—

(a) a provision contained in any instrument made for the purpose of implementing—

(i) Council Directive 1995/18/EC dated 19th June 1995 on the licensing of railway undertakings, or

(ii) Chapter III of Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast), or

(b) any action taken by an EEA State for that purpose;".

(3) For section 80(1A) [M7] (duty of certain persons to furnish information to the Secretary of State, the Scottish Ministers or the Office of Rail and Road on request) for the words from "for the purpose of implementing" to the end substitute—

"for the purpose of implementing—

(a) Council Directive 1995/18/EC dated 19th June 1995 on the licensing of railway undertakings, or

(b) Chapter III of Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast).".

(4) In section 145(2) (general restrictions on disclosure of information)—

(a) in paragraph (ga) [M8], for the words from "for the purpose of implementing" to the end substitute—

"for the purpose of implementing—

(i) Council Directive 1995/18/EC dated 19th June 1995 on the licensing of railway undertakings, or

(ii) Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast);"; and

(b) omit paragraph (gb) [M9].

Marginal Citations

M5 1993 c. 43.

M6 The definition of "European Licence" was substituted for the definition of "international licence" by S.I. 2005/3050, **Schedule 1**, Part 1, paragraph 3(1) and (3)(a).

M7 Subsection (1A) was inserted by S.I. 2005/3050. Schedule 1, Part 1, paragraph 3(1) and (7)(a) and amended by S.I. 2015/1682, **Sch**edule, Part 1, paragraph 1(xx).

M8 Section 145(2)(ga) was inserted by S.I 2005/3050, Schedule 1, Part 1, paragraph 3(1) and (9) and amended by S.I. 2015/1682, **Sch**edule, Part 1, paragraph 1(aaa).

M9 Section 145(2)(gb) was inserted by S.I. 2005/3049, **Schedule 1**, Part 1, paragraph 4(e)(ii) and amended by S.I. 2009/1122, **Sch**edule, paragraph 1(1) and (2)(a) and S.I. 2015/1682, **Sch**edule, Part 1, paragraph 1(aaa).

The Greater London Authority Act 1999

4. In section 235(2)(b) of the Greater London Authority Act 1999 [M10] (restrictions on disclosure of information), for the words from "implementing" to the end substitute " implementing Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast); ".

Marginal Citations

M10 1999 c.29. Subsection (2)(b) was amended by the Railways Act 2005 (c. 14), **Schedule 12**, paragraph 14(1) and (5) and Schedule 13, Part 1; S.I. 2005/3049, **Schedule 1**, Part 1, paragraph 5(a); S.I. 2009/1122, **Sch**edule, paragraph 2; S.I. 2014/892, **Schedule 1**, Part 2, paragraph 119(1) and (2); and SI 2015/1682, Schedule, Part 1, paragraph 4(n)(iv).

The Railways and Transport Safety Act 2003

5. In section 17 of the Railways and Transport Safety Act 2003 [M11] (extent)—

(a) omit "only", and

(b) after paragraph (b) insert—

", and

(c) Northern Ireland.".

Marginal Citations

M11 2003 c. 20.

The Civil Contingencies Act 2004

6.—(1) Schedule 1 to the Civil Contingencies Act 2004 [M12] is amended as follows.

(2) For paragraph 24(1) substitute—

"(1) A person who provides services in connection with railways in Great Britain and who holds a European licence granted pursuant to—

(a) a provision contained in any instrument made for the purpose of implementing—

(i) Council Directive 1995/18/EC dated 19th June 1995 on the licensing of railway undertakings, or

(ii) Chapter III of Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast), or

(b) any action taken by an EEA State for that purpose.".

(3) For paragraph 35(1) substitute—

"(1) A person who provides services in connection with railways, in so far as such services are provided in Scotland, and who holds a European licence granted pursuant to—

(a) a provision contained in any instrument made for the purpose of implementing—

(i) Council Directive 1995/18/EC dated 19th June 1995 on the licensing of railway undertakings, or

(ii) Chapter III of Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast), or

(b) any action taken by an EEA State for that purpose.”.

Marginal Citations

M12 2004 c. 36. Schedule 1, paragraphs 24 and 35 were substituted by S.I. 2005/3050, **Schedule 1**, Part 1, paragraph 4.

PART 2

Amendments to Secondary Legislation

The Town and Country Planning (Control of Advertisements) Regulations 1992

7. In regulation 2(1) (interpretation) of the Town and Country Planning (Control of Advertisements) Regulations 1992 [M13], in the definition of “statutory undertaker” for the words from “Council Directive” to “of the Council” substitute “ Council Directive 1995/18/EC dated 19th June 1995 on the licensing of railway undertakings or Chapter III of Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast) ”.

Marginal Citations

M13 S.I. 1992/666; revoked in relation to England by S.I. 2007/783, **regulation 32**. The words to be substituted in the definition of “statutory undertaker” were inserted by S.I. 2005/3050, **Schedule 1**, Part 2, paragraph 7(1) and (3). There are other amendments to the definition but none is relevant.

The London Underground (East London Line Extension) (No. 2) Order 2001

8. In Schedule 11 (protection for Railtrack) to the London Underground (East London Line Extension) (No. 2) Order 2001 [M14], in the definition of “train operator” in paragraph 1(2) for the words from “Council Directive” to the end substitute “ Council Directive 1995/18/EC dated 19th June 1995 on the licensing of railway undertakings or Chapter III of Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast). ”.

Marginal Citations

M14 S.I. 2001/3682. The words to be substituted in the definition of “train operator” were inserted by S.I. 2005/3050, **Schedule 1**, Part 2, paragraph 9(1) and (2)(b). There are other amendments to this definition but none is relevant.

The Docklands Light Railway (Silvertown and London City Airport Extension) Order 2002

9. In Part 1 of Schedule 11 (for protection of railway undertakers) to the Docklands Light Railway (Silvertown and London City Airport Extension) Order 2002 [M15], in the definition of “train operator” in paragraph 13(6) for the words from “Council Directive” to the end substitute “ Council Directive

1995/18/EC dated 19th June 1995 on the licensing of railway undertakings or Chapter III of Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast). ".

Marginal Citations

M15 S.I. 2002/1066. The words to be substituted in the definition of "train operator" were inserted by S.I. 2005/3050, **Schedule 1**, Part 2, paragraph 10(1) and (2)(b).

The Docklands Light Railway (Woolwich Arsenal Extension) Order 2004

10. In Schedule 13 (for protection of railway interests) to the Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 [M16], in the definition of "train operator" in paragraph 15(6) for the words from "Council Directive" to the end substitute " Council Directive 1995/18/EC dated 19th June 1995 on the licensing of railway undertakings or Chapter III of Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast). ".

Marginal Citations

M16 S.I. 2004/757. The words to be substituted in the definition of "train operator" were inserted by S.I. 2005/3050, **Schedule 1**, Part 2, paragraph 11(1) and (2)(b).

The British Transport Police (Police Services Agreement) Order 2004

11. In article 2(1)(b) (requirement to enter into a police services agreement) of the British Transport Police (Police Services Agreement) Order 2004 [M17] for the words from "Council Directive" to "of the Council" substitute " Council Directive 1995/18/EC dated 19th June 1995 on the licensing of railway undertakings or Chapter III of Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast) ".

Marginal Citations

M17 S.I. 2004/1522. The words to be substituted were inserted by S.I. 2005/3050, **Schedule 1**, Part 2, paragraph 12(2).

The Central Rating List (Wales) Regulations 2005

12. In regulation 7(3) (railway hereditaments) of the Central Rating List (Wales) Regulations 2005 [M18], in the definition of " "licence exempt operator" and "licence holder"" for the words from "Council Directive" to "of the Council" substitute " Council Directive 1995/18/EC dated 19th June 1995 on the licensing of railway undertakings or Chapter III of Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast) ".

Marginal Citations

M18 S.I. 2005/422. The words to be substituted were inserted by S.I. 2005/3050, **Schedule 1**, Part 2, paragraph 13(1) and (2)(b).

The Central Rating List (England) Regulations 2005

13. In regulation 6(4) (railway hereditaments) of the Central Rating List (England) Regulations 2005 [M19] in the definition of " "licence exempt operator" and "licence holder"" for the words from "Council Directive" to the end substitute " Council Directive 1995/18/EC dated 19th June 1995 on the licensing of railway undertakings or Chapter III of Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast); ".

Marginal Citations

M19 S.I. 2005/551. The words to be substituted were inserted by S.I. 2005/3050, **Schedule 1**, Part 2, paragraph 14(1) and (2)(b).

The Railways (Interoperability) Regulations 2011

14. In regulation 36(10)(b)(i) (national vehicle register) of the Railways (Interoperability) Regulations 2011 [M20], for the words from "article 30" to the end substitute " article 55 of Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast); ".

Marginal Citations

M20 S.I. 2011/3066; paragraph (10)(b)(i) is amended by S.I. 2015/1682, **Sch**edule, Part 2, paragraph 9(b).

The Channel Tunnel (International Arrangements) (Charging Framework and Transfer of Economic Regulation Functions) Order 2015

15.—(1) The Channel Tunnel (International Arrangements) (Charging Framework and Transfer of Economic Regulation Functions) Order 2015 [M21] is amended as follows.

(2) In regulation 2 (interpretation) for the definitions of "the 2005 Regulations" and "the 2015 Regulations" substitute—

""the 2016 Regulations" means the Railway (Access, Management and Licensing of Railway Undertakings) Regulations 2016 [M22];".

(3) In regulation 5(2) for the words "the 2005 Regulations, as amended by the 2015 Regulations,", substitute " the 2016 Regulations ".

(4) In regulation 5(2)(a) and (2)(b) for the words "the 2005 Regulations as so amended,", in both places, substitute " the 2016 Regulations ".

Marginal Citations

M21 S.I. 2015/785. There are amendments to regulation 5 which are not relevant to these Regulations.

M22 S.I. 2016/645.

SCHEDULE 2

Regulations 5, 6 and 10

Services to be supplied to railway undertakings

1. The minimum access package referred to in regulation 6(1) must comprise—

(a) handling of requests for infrastructure capacity; and

(b) the right to utilise such capacity as is granted and, in particular—

(i) such railway infrastructure including track, points and junctions as are necessary to utilise that capacity;

(ii) electrical supply equipment for traction current, where available and as is necessary to utilise that capacity;

(iii) train control, including signalling, train regulation, dispatching and the communication and provision of information on train movements; and

(iv) all other information as is necessary to implement or to operate the service for which capacity has been granted.

2. Access, including track access to services facilities and the supply of services referred to in regulations 5, 6 and 10 must comprise, where they exist—

(a) refuelling facilities, and supply of fuel in these facilities, charges for which must be shown on the invoices separately;

(b) passenger stations, including buildings and other facilities such as travel information display and a suitable location for ticketing services;

(c) freight terminals;

(d) marshalling yards;

(e) train formation facilities including shunting facilities;

(f) storage sidings specifically dedicated to the temporary parking of railway vehicles between two assignments;

(g) maintenance facilities, with the exception of heavy maintenance facilities dedicated to high-speed trains or to other types of rolling stock requiring specific facilities;

(h) other technical facilities, including cleaning and washing facilities;

(i) maritime and inland port facilities which are linked to rail activities; and

(j) relief facilities.

3. The additional services referred to in regulation 6(11) may comprise—

(a) traction current, charges for which must be shown on the invoices separately from charges for using the electrical supply equipment, without prejudice to the application of Directive 2009/72/EC of the European Parliament and of the Council of 13th July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC[M23];

(b) pre-heating of passenger trains;

(c) tailor-made contracts for—

(i) control of the transport of dangerous goods; and

(ii) assistance in running abnormal trains.

Marginal Citations

M23 O.J. No. L 211, 14.8.09, p. 55; amendments have been made which are not relevant to these Regulations.

4. The ancillary services referred to in regulation 6(12) may comprise—

(a) access to the telecommunication network;

(b) the provision of supplementary information;

(c) technical inspection of rolling stock;

(d) ticketing services in passenger stations; and

(e) heavy maintenance services supplied in maintenance facilities dedicated to high-speed trains or to other types of rolling stock requiring specific facilities.

SCHEDULE 3

Regulations 14, 16 and 18

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 13; 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 charge 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 railway 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 the network.

(4) Without prejudice to sub-paragraph (8) the charges for the minimum access package and track access to service facilities referred to in paragraphs 1 and 2 of Schedule 2 must be set at the cost that is directly incurred as a result of operating the train service.

(5) From 2nd August 2019 or earlier, the infrastructure manager must **[**[F1], subject to sub-paragraphs (5A) and 5(B),**]** calculate the cost under sub-paragraph (4) or, as the case may be, under the first paragraph of Article 4 of the Channel Tunnel charging framework, in accordance with Commission Implementing Regulation (EU) 2015/909 of 12th June 2015 on the modalities for the calculation of the cost that is directly incurred as a result of operating the train service [M24].

[[F2](5A) For the purposes of the calculation of direct costs on a network-wide basis, referred to in paragraph 1 of Article 3 of the Commission Implementing Regulation referred to in sub-paragraph (5), the infrastructure manager may apply the costs of efficient service provision.

(5B) For the purposes of calculating the direct unit costs referred to in paragraph 1 of Article 5 of the Commission Implementing Regulation referred to in sub-paragraph (5), the infrastructure manager may modulate the average direct unit costs to take into account the different levels of wear and tear caused to the infrastructure according to one or more of the parameters listed in paragraph 2 of Article 5 of that Commission Implementing Regulation.**]**

(6) The charge imposed for track access within service facilities referred to in paragraph 2 of Schedule 2 and the supply of services in such service facilities must not exceed the cost of providing it, plus a reasonable profit.

(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 not exceed the cost of providing the service, plus a reasonable profit.

(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 railway infrastructure charges must be related to the costs attributable to the services.

Textual Amendments

F1 Words in Sch. 3 para. 1(5) inserted (31.12.2020) by The Railways (Access, Management and Licensing of Railway Undertakings) (Amendments etc.) (EU Exit) Regulations 2019 (S.I. 2019/518), regs. 1(3)(b), **21(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F2 Sch. 3 para. 1(5A)(5B) inserted (29.3.2019) by The Railways (Access, Management and Licensing of Railway Undertakings) (Amendments etc.) (EU Exit) Regulations 2019 (S.I. 2019/518), regs. 1(3)(a), **21(b)**

Marginal Citations

M24 O.J. No. L 148, 13.06.15, p.17.

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 and Road or, in relation to a rail link facility, the Secretary of State, may levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, whilst guaranteeing optimum competitiveness, in particular in respect of rail market segments.

(2) For the purposes of this paragraph—

(a) approval given by the Secretary of State in relation to a rail link facility must be given through the development agreement; and

(b) approval given by the Office of Rail and Road must—

(i) in relation to railway infrastructure subject to the access charges review, be given as part of that review; and

(ii) in relation to any other railway infrastructure, be given in such form or manner as the Office may require.

(3) The effect of sub-paragraphs (1) and (2) 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.

(4) The charging system must respect the productivity increases achieved by applicants.

(5) Before approving the levy of a mark-up under sub-paragraph (1) the Office of Rail and Road or, as the case may be, the Secretary of State, must ensure that the infrastructure manager evaluates the relevance of a mark-up for the specific market segments, considering at least the pairs listed in sub-paragraph (10) and retaining the relevant ones.

(6) The list of market segments to be considered by the infrastructure manager under sub-paragraph (5) must contain at least the three following segments: freight services, passenger services within the framework of a public service contract and other passenger services.

(7) In addition to the market segments considered under sub-paragraph (5), the infrastructure manager may consider further market segments according to commodity or passengers transported.

(8) Market segments in which railway undertakings are not currently operating but in which they may provide services during the period of validity of the charging system must also be defined; the infrastructure manager must not include a mark-up in the charging system for those market segments.

(9) The list of market segments must be published in the network statement and reviewed at least every five years; the Office of Rail and Road must control that list in accordance with paragraph (2) of regulation 31.

(10) The pairs referred to in sub-paragraph (5) are—

(a) passenger versus freight services;

(b) trains carrying dangerous goods versus other freight trains;

(c) domestic versus international services;

(d) combined transport versus direct trains;

(e) urban or regional versus interurban passenger services;

(f) block trains versus single wagon load trains; and

(g) regular versus occasional train services.

3.—(1) Subject to sub-paragraph (2), for specific investment projects completed—

(a) since 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 project must increase efficiency or cost-effectiveness; and

(b) the project must be one that 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 the railway 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 13 must demonstrate that the charging system meets the requirements in sub-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 deadline for the publication of the network statement in accordance with regulation 13(9).

Discounts

6.—(1) [F3]... Notwithstanding paragraph 1(4) and (5) 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 must 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 railway infrastructure, with reference to specified traffic flows, granting time limited discounts to encourage the development of new rail services, or discounts encouraging the use of considerably under-utilised lines.

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

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

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

(7) Discount schemes must be applied in a non-discriminatory manner to any railway undertaking.

Textual Amendments

F3 Words in Sch. 3 para. 6(1) omitted (31.12.2020) by virtue of The Railways (Access, Management and Licensing of Railway Undertakings) (Amendments etc.) (EU Exit) Regulations 2019 (S.I. 2019/518), regs. 1(3)(b), **21(c)**; 2020 c. 1, Sch. 5 para. 1(1)

Performance Schemes

7.—(1) The basic principles referred to in regulation 16(3) are as follows.

(2) In order to achieve an agreed level of performance and not to endanger the economic viability of a service, the infrastructure manager must agree with applicants the main parameters of the performance scheme, in particular the value of delays, the thresholds for payments due under the performance scheme relative both to individual train runs and to all train runs of a railway undertaking in a given period of time.

(3) The infrastructure manager must communicate to the railway undertakings the working timetable, on the basis of which delays will be calculated, at least five days before the train run, except that the infrastructure manager may apply a shorter notice period in case of force majeure or late alterations of the working timetable.

(4) All delays must be attributable to one of the following delay classes and sub-classes—

(a) operation/planning management attributable to the infrastructure manager—

(i) timetable compilation;

(ii) formation of train;

(iii) mistakes in operations procedure;

(iv) wrong application of priority rules;

(v) staff; or

(vi) other causes;

(b) railway infrastructure installations attributable to the infrastructure manager—

(i) signalling installations;

(ii) signalling installations at level crossings;

(iii) telecommunications installations;

(iv) power supply equipment;

(v) track;

(vi) structures;

(vii) staff; or

(viii) other causes;

(c) civil engineering causes attributable to the infrastructure manager—

(i) planned construction work;

(ii) irregularities in execution of construction work;

(iii) speed restriction due to defective track; or

(iv) other causes;

(d) causes attributable to other infrastructure managers—

(i) caused by previous infrastructure manager; or

(ii) caused by next infrastructure manager;

(e) commercial causes attributable to the railway undertaking—

(i) exceeding the stop time;

(ii) request of the railway undertaking;

(iii) loading operations;

(iv) loading irregularities;

(v) commercial preparation of train;

(vi) staff; or

(vii) other causes;

(f) rolling stock attributable to the railway undertaking—

(i) roster planning/re-rostering;

(ii) formation of train by railway undertaking;

(iii) problems affecting coaches (passenger transport);

(iv) problems affecting wagons (freight transport);

(v) problems affecting cars, locomotives and rail cars;

(vi) staff; or

(vii) other causes;

(g) causes attributable to other railway undertakings—

(i) caused by next railway undertaking; or

(ii) caused by previous railway undertaking;

(h) external causes attributable to neither infrastructure manager nor railway undertaking—

(i) strike;

(ii) administrative formalities;

(iii) outside influence;

(iv) effects of weather and natural causes;

(v) delay due to external reasons on the next network; or

(vi) other causes; or

(i) secondary causes attributable to neither infrastructure manager nor railway undertaking—

(i) dangerous incidents, accidents and hazards;

(ii) track occupation caused by the lateness of the same train;

(iii) track occupation caused by the lateness of another train;

(iv) turn-around;

(v) connection; or

(vi) further investigation needed.

(5) Wherever possible, delays must be attributed to a single organisation, considering both the responsibility for causing the disruption and the ability to re-establish normal traffic conditions.

(6) The calculation of payments must take into account the average delay of train services of similar punctuality requirements.

[F4SCHEDULE 4

Regulations 19 and 22

Timetable for the Allocation Process

Textual Amendments

F4 Sch. 4 substituted (11.2.2019) by The Railways (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations 2019 (S.I. 2019/82), reg. 1(2), **Sch. 1**

This Schedule substantially reproduces the provisions of Annex VII to the Directive (the text of which was replaced by Commission Delegated Decision (EU) 2017/2075 replacing Annex VII to Directive 2012/34/EU of the European Parliament and of the Council establishing a single European railway area)

1. The working timetable must be established once per calendar year.

2. The change of working timetable must take place at midnight on the second Saturday in December. Where an adjustment 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 and at such other intervals between these dates as are required. Infrastructure managers may agree on different dates and in this case they **[**F5may**]** inform the Commission if international traffic may be affected.

Textual Amendments

F5 Word in Sch. 4 para. 2 substituted (31.12.2020) by The Railways (Access, Management and Licensing of Railway Undertakings) (Amendments etc.) (EU Exit) Regulations 2019 (S.I. 2019/518), regs. 1(3)(b), **22**; 2020 c. 1, Sch. 5 para. 1(1)

3. The deadline for receipt of requests for capacity to be incorporated into the working timetable must be no more than twelve months in advance of the change of the working timetable. Requests received after the deadline must also be considered by the infrastructure manager.

4. No later than 11 months before the change of the working timetable, the infrastructure managers must ensure that provisional international train paths have been established in cooperation with other relevant infrastructure managers. Infrastructure managers must ensure that as far as possible these are adhered to during the subsequent processes.

5. The infrastructure manager must prepare and publish a draft working timetable at the latest four months after the deadline referred to in paragraph 3.

6. The infrastructure manager must decide on the requests it receives after the deadline referred to in paragraph 3 in accordance with a process published in the network statement.

7. The infrastructure manager may reschedule an allocated train path if it is necessary to ensure the best possible matching of all path requests and if it is approved by the applicant to which the path had been allocated. The infrastructure manager must update the draft working timetable no later than one month before the change of the working timetable in order to include all train paths allocated after the deadline referred to in paragraph 3.

8. In the case of trains crossing from one network to another which arrive with a presumed delay of not more than 10 hours and, from 14 December 2019, 18 hours, the infrastructure manager of the other network must not consider the train path cancelled or request application for another train path, including if it decides to allocate a different train path, unless the applicant informs the infrastructure manager that the train will not cross to the other network. The infrastructure manager must communicate to the applicant the updated or new train path without delay, including, if different, the link between that train path number and the train path number of the cancelled train path.

9. As regards temporary restrictions of the capacity of railway lines, for reasons such as infrastructure works, including associated speed restrictions, axle load, train length, traction, or structure gauge ('capacity restrictions'), of a duration of more than seven consecutive days and for which more than 30% of the estimated traffic volume on a railway line per day is cancelled, re-routed or replaced by other modes of transport, the infrastructure managers concerned must publish all capacity restrictions and the preliminary results of a consultation with the applicants for a first time at least 24 months, to the extent they are known, and, in an updated form, for a second time at least 12 months before the change of the working timetable concerned.

10. The infrastructure managers concerned must also create a mechanism whereby they jointly discuss those capacity restrictions, if the impact of the capacity restrictions is not limited to one network, with interested applicants, the representatives of infrastructure managers referred to in regulation 20(4) and the main operators of service facilities concerned when they are published for the first time, unless the infrastructure managers and the applicants agree that such a mechanism is not needed. The purpose of the joint discussions is to facilitate the preparation of timetables, including the provision of diversionary routes.

11. When publishing capacity restrictions in accordance with paragraph 9 for a first time, the infrastructure manager must launch a consultation with the applicants and the main operators of services facilities concerned on the capacity restrictions. Where a coordination in accordance with paragraph 12 is required between the first and second publication of capacity restrictions, infrastructure managers must consult with applicants and the main operators of service facilities concerned a second time between the end of that coordination and the second publication of the capacity restriction.

12. If the impact of any proposed capacity restrictions is not limited to one network, the infrastructure managers concerned, including infrastructure managers that might be impacted by the rerouting of trains, must coordinate between themselves capacity restrictions that could involve a cancellation, re-routing of a train path or a replacement by other modes. The coordination must be completed—

(a) no later than 18 months before the change of the working timetable if more than 50% of the estimated traffic volume on a railway line per day is cancelled, re-routed or replaced by other modes of transport for a duration of more than 30 consecutive days;

(b) no later than 13 months and 15 days before the change of the working timetable period if more than 30% of the estimated traffic volume on a railway line per day is cancelled, re-routed or replaced by other modes of transport for a duration of more than seven consecutive days;

(c) no later than 13 months and 15 days before the change of the working timetable period if more than 50% of the estimated traffic volume on a railway line per day is cancelled, re-

routed or replaced by other modes of transport for a duration of seven consecutive days or less.

The infrastructure managers must, if necessary, invite the applicants active on the lines concerned and the main operators of service facilities concerned to get involved in that coordination.

13. As regards capacity restrictions of a duration of seven consecutive days or less that need not be published in accordance with paragraph 9 and for which more than 10% of the estimated traffic volume on a railway line per day is cancelled, re-routed or replaced by other modes, that occur during the following timetable period and that the infrastructure manager becomes aware of no later than 6 months and 15 days before the change of the working timetable, the infrastructure manager must consult the applicants concerned on the envisaged capacity restrictions and communicate the updated capacity restrictions at least four months before the change of the working timetable. The infrastructure manager must provide details on the offered train paths for passenger trains no later than four months and for freight trains no later than one month before the beginning of the capacity restriction, unless the infrastructure manager and the concerned applicants agree on a shorter lead time.

14. Infrastructure managers may decide to apply more stringent thresholds for capacity restrictions based on lower percentages of estimated traffic volumes or shorter durations than indicated in this Schedule or to apply criteria in addition to the ones mentioned in this Schedule, pursuant to a consultation with applicants and facility operators. They must publish the thresholds and criteria for clustering capacity restrictions in their network statements under regulation 13(4)(g) and (h).

15. The infrastructure manager may decide not to apply the periods laid down in paragraphs 9 to 13, if the capacity restriction is necessary to re-establish safe train operations, the timing of the restrictions is beyond the control of the infrastructure manager, the application of those periods would be cost ineffective or unnecessarily damaging in respect of asset life or condition, or if all concerned applicants agree. In those cases and in case of any other capacity restrictions that are not subject to consultation in accordance with other provisions of this Schedule, the infrastructure manager must consult the applicants and the main operators of service facilities concerned forthwith.

16. The information to be provided by the infrastructure manager when acting in accordance with paragraphs 9, 13 or 15 must include—

(a) the planned day, time of day, and, as soon as it can be set, the hour of the beginning and of the end of the capacity restriction;

(b) the section of line affected by the restriction; and

(c) where applicable, the capacity of diversionary lines.

The infrastructure manager must publish that information, or a link where it can be found, in its network statement under regulation 13(4)(g) and (h). The infrastructure manager must keep this information updated.

17. As regards the capacity restrictions of a duration of at least 30 consecutive days and affecting more than 50% of the estimated traffic volume on a railway line, the infrastructure manager must provide the applicants upon their request during the first round of consultation with a comparison of the conditions to be encountered under at least two alternatives of capacity restrictions. The infrastructure manager must design those alternatives on the basis of the input provided by the applicants at the time of their requests and jointly with them. The comparison must, for each alternative, include at least—

(a) the duration of the capacity restriction;

(b) the expected indicative infrastructure charges due;

(c) the capacity available on diversionary lines;

(d) the available alternative routes; and

(e) the indicative travel times.

Before making a choice between the alternatives of capacity restrictions, the infrastructure manager must consult the interested applicants and take into account the impacts of the different alternatives on those applicants and on the users of the services.

18. As regards the capacity restrictions of a duration of more than 30 consecutive days and affecting more than 50% of the estimated traffic volume on a railway line, the infrastructure manager must establish criteria for which trains of each type of service should be re-routed, taking into account the applicant's commercial and operational constraints, unless those operational constraints result from managerial or organisational decisions of the applicant, and without prejudice to the aim of reducing costs of the infrastructure manager in accordance with regulation 15(7). The infrastructure manager must publish in the network statement those criteria together with a preliminary allocation of the remaining capacity to the different types of train services when it acts in accordance with paragraph 9. After the end of the consultation and without prejudice to the obligations of the infrastructure manager in accordance with regulation 13(4)(g) and (h) the infrastructure manager, based on the feed-back it received from the applicants, must provide the railway undertakings concerned with an indicative break-down by type of service of the remaining capacity.**]**

[[F6]SCHEDULE 4A

Regulation 15

Basic Principles and Parameters of Contractual Agreements between Competent Authorities and Infrastructure Managers

Textual Amendments

F6 Sch. 4A inserted (31.12.2020) by The Railways (Access, Management and Licensing of Railway Undertakings) (Amendments etc.) (EU Exit) Regulations 2019 (S.I. 2019/518), reg. 1(3)(b), **Sch.**; 2020 c. 1, Sch. 5 para. 1(1)

1. The contractual agreement referred to in regulation 15(6) must specify provisions of regulation 15(6) to (13) and include at least the following elements—

(a) the scope of the agreement as regards infrastructure and service facilities, structured in accordance with Schedule 2 (services to be supplied to railways undertakings). It shall cover all aspects of infrastructure management, including maintenance and renewal of the infrastructure already in operation. Where appropriate, construction of new infrastructure may also be covered;

(b) the structure of payments or funds allocated to the infrastructure services listed in Schedule 2, to maintenance and renewal and to dealing with existing maintenance and renewal backlogs. Where appropriate, the structure of payments or funds allocated to new infrastructure may be covered;

(c) user-oriented performance targets, in the form of indicators and quality criteria covering elements such as:

(i) train performance, such as in terms of line speed and reliability, and customer satisfaction,

(ii) network capacity,

(iii) asset management,

(iv) activity volumes,

(v) safety levels, and

(vi) environmental protection;

(d) the amount of possible maintenance backlog and the assets which will be phased out of use and therefore trigger different financial flows;

(e) the incentives referred to in regulation 15(7), with the exception of those incentives implemented through regulatory measures in accordance with regulation 15(8)(b);

(f) minimum reporting obligations for the infrastructure manager in terms of content and frequency of reporting, including information to be published annually;

(g) the agreed duration of the agreement, which must be synchronised and consistent with the duration of the infrastructure manager's business plan, concession or licence, where appropriate, and the charging framework and rules set by the State;

(h) rules for dealing with major disruptions of operations and emergency situations, including contingency plans and early termination of the contractual agreement, and timely information to users;

(i) remedial measures to be taken if either of the parties is in breach of its contractual obligations, or in exceptional circumstances affecting the availability of public funding; this includes conditions and procedures for renegotiation and early termination.**]**

SCHEDULE 5

Regulation 35(2)

Accounting information to be supplied to the Office of Rail and Road upon request

1. The accounting information referred to in regulation 35(2) is as follows—

Account separation

(a) (a) separate profit and loss accounts and balance sheets for freight, passenger and railway infrastructure management activities;

(b) (b) detailed information on individual sources and uses of public funds and other forms of compensation in a transparent and detailed manner, including a detailed review of the businesses' cash flows in order to determine in what way these public funds and other forms of compensation have been used;

(c) (c) cost and profit categories making it possible to determine whether cross-subsidies between these different activities occurred, according to the requirements of the Office of Rail and Road;

(d) (d) methodology used to allocate costs between different activities;

(e) (e) where the regulated firm is part of a group structure, full details of inter-company payments;

Monitoring of track access charges

(f) (f) different cost categories, in particular providing sufficient information on marginal/direct costs of the different services or groups of services so that railway infrastructure charges can be monitored;

(g) (g) sufficient information to allow monitoring of the individual charges paid for services (or groups of services); if required by the Office of Rail and Road, this information must contain data on volumes of individual services, prices for individual services and total revenues for individual services paid by internal and external customers;

(h) (h) costs and revenues for individual services (or groups of services) using the relevant cost methodology, as required by the regulatory body, to identify potentially anti-competitive pricing (cross-subsidies, predatory pricing and excessive pricing);

Indication of financial performance

(i) (i) a statement of financial performance;

(j) (j) a summary expenditure statement;

(k) (k) a maintenance expenditure statement;

(l) (l) an operating expenditure statement;

(m) (m) an income statement; and

(n) (n) supporting notes that amplify and explain the statements, where appropriate.

[F7SCHEDULE 6

Regulation 47

Transitory modifications

Textual Amendments

F7 Sch. 6 inserted (11.2.2019) by The Railways (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations 2019 (S.I. 2019/82), reg. 1(2), **Sch. 2**

1. Until the end of 31 December 2020, these Regulations apply with the following modifications.

Interpretation

2. In regulation 3 (interpretation)—

(a) after the definition of "cross-border agreement" insert—

""development", in relation to railway infrastructure, means network planning, financial and investment planning as well as the building and upgrading of the infrastructure;";

(b) for the definition of "the Directive" substitute—

""the Directive" means Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast);";

(c) after the definition of "electrical plant" insert—

""essential functions", in relation to infrastructure management, means decision-making concerning—

(a) train path allocation, including both the definition and the assessment of availability and the allocation of individual train paths; and

(b) infrastructure charging, including the determination and collection of charges, in accordance with the charging framework and the capacity allocation framework established pursuant to regulations 14 and 19 respectively;";

(d) after the definition of "framework agreement" insert—

""high speed passenger services" means passenger rail services operated without intermediate stops between two places separated by a distance of at least 200km on

specially-built high-speed lines equipped for speeds generally equal to or greater than 250km/h and running on average at those speeds;";

(e) for the definition of "infrastructure manager" substitute—

""infrastructure manager" means any body or undertaking that is responsible for the operation, maintenance and renewal of railway infrastructure on a network and participating in its development;";

(f) omit the definition of "international passenger service" and insert—

""main infrastructure manager" has the same meaning as in the Directive;

"maintenance", in relation to railway infrastructure, means works intended to maintain the condition and capability of the existing infrastructure;

"management board" means the senior body of an undertaking performing executive and administrative functions, which is responsible and accountable for day-to-day management of the undertaking;";

(g) after the definition of "nuclear site" insert—

""operation", in relation to railway infrastructure, means train path allocation, traffic management and infrastructure charging;";

(h) after the definition of "public passenger transport" insert—

""public-private partnership" means a binding arrangement between a public body or bodies and one or more undertakings other than the main infrastructure manager, under which the undertakings—

(a) partially or totally construct or fund railway infrastructure; or

(b) acquire the right to exercise any of the functions of the infrastructure manager for a predefined period of time;";

(i) in the definitions of "relevant public service contract" and "relevant public service operator" for "an international" substitute "a";

(j) after the definition of "relevant public service operator" insert—

""renewal", in relation to railway infrastructure, means major substitution works on the existing infrastructure which do not change its overall performance;";

(k) after the definition of "service provider" insert—

""supervisory board" means the most senior body of an undertaking that fulfils supervisory tasks, including the exercise of control over the management board and taking general strategic decisions regarding the undertaking;";

(l) after the definition of "tunnel system" insert—

""upgrading" in relation to railway infrastructure, means making major modification works to the infrastructure which improve its overall performance;"; and

(m) after the definition of ""urban" or "suburban"" insert—

""vertically integrated undertaking" means—

(a) an undertaking where, within the meaning of Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (the EC Merger Regulation)—

(i) an infrastructure manager is controlled by an undertaking which at the same time controls one or several railway undertakings that operate rail services on the infrastructure manager's network;

(ii) an infrastructure manager is controlled by one or several railway undertakings that operate rail services on the infrastructure manager's network; or

(iii) one or several railway undertakings that operate rail services on the infrastructure manager's network are controlled by an infrastructure manager; or

(b) an undertaking consisting of distinct divisions, including an infrastructure manager and one or several divisions providing transport services that do not have a distinct legal personality,

provided that where an infrastructure manager and a railway undertaking are fully independent of each other, but both are controlled directly by a **[**[F8]national authority**]** without an intermediary entity, they are not considered to constitute a vertically integrated undertaking for the purposes of these Regulations;.".

Textual Amendments

F8 Words in Sch. 6 para. 2(m) substituted (31.12.2020) by The Railways (Access, Management and Licensing of Railway Undertakings) (Amendments etc.) (EU Exit) Regulations 2019 (S.I. 2019/518), regs. 1(3)(b), **24(a)**; 2020 c. 1, Sch. 5 para. 1(1)

Scope

3. In regulation 4 (scope)—

(a) for paragraph (6) substitute—

"(6) The provisions of—

(a) regulation 6;

(b) regulation 8A;

(c) regulation 8B;

(d) regulation 8C;

(e) regulation 9A;

(f) regulation 10;

(g) regulation 11;

(h) regulation 12(1), (2) and (3);

(i) regulation 13;

(j) Parts 4 to 6; and

(k) Schedules 2 to 5 (insofar as those Schedules apply by virtue of any of the provisions referred to in sub-paragraphs (a) to (j)),

do not apply to the networks listed in paragraph (7).

(6A) The provisions of—

(a) regulation 8A;

(b) regulation 8B;

(c) regulation 8C;

(d) regulation 9A;

(e) regulation 11;

(f) regulation 12(1), (2) and (3);

(g) regulation 14(9), (9A) and (10);

(h) regulation 15(1); and

(i) regulation 19(4) and (4A),

do not apply to the lines described in paragraph (7A).

(6B) In the case of the lines referred to in paragraph (7A), where sub-paragraph (7A)(a) applies, regulation 13 and Parts 4 to 6, together with the regulations referred to in paragraph (6A), do not apply until capacity is requested by another applicant.

(6C) The provisions of—

(a) regulation 8A;

(b) regulation 8B;

(c) regulation 8C

(d) regulation 9A;

(e) regulation 14(9), (9A) and (10); and

(f) regulation 19(4) and (4A),

do not apply to the regional, low-traffic networks described in paragraph (7B).

(6D) Where there is an existing public-private partnership concluded before 16th June 2015 and the private party to that partnership is also a railway undertaking responsible for providing passenger railway services on the infrastructure, that private party is exempt from the provisions of—

(a) regulation 8A;

(b) regulation 9A;

(c) regulation 14(9), (9A) and (10); and

(d) regulation 19(4) and (4A),

and regulation 5(4) does not apply to services operated by railway undertakings on the same infrastructure as the passenger services provided by the private party under the public private partnership."

(b) after paragraph (7) insert—

"(7A) The lines referred to in paragraph (6A) and (6B) are local, low-traffic lines of a length not exceeding 100km that are used for freight traffic between a mainline and points of origin or destination of shipments along those lines, provided that those lines are managed by entities other than the main infrastructure manager and that either—

(a) those lines are used by a single freight operator, or

(b) the essential functions in relation to those lines are performed by a body which is not controlled by any railway undertaking.

(7B) The regional, low-traffic networks referred to in paragraph (6C) are regional, low-traffic networks managed by an entity other than the main infrastructure manager and used for the operation of regional passenger services provided by a single railway undertaking where—

(a) capacity for passenger services on that network has not been requested, and

(b) the single railway undertaking is independent of any railway undertaking operating freight services.

(7C) The lines described in paragraph (7A) include those that are used also, to a limited extent, for passenger services and the regional, low-traffic networks described in paragraph (7B) include those where the line is used also, to a limited extent, for freight services."

Access rights

4. In regulation 5 (access rights)—

(a) in paragraph (1) omit "international";

(b) in paragraph (4)—

(i) for "an international passenger service" substitute "a passenger service";

(ii) for "the international route" substitute "the route"; and

(iii) omit ", including stations located in the same Member State";

(c) omit paragraph (5);

(d) for paragraph (6) substitute—

"(6) The Office of Rail and Road may, in accordance with regulation 33, limit the access rights granted by this regulation in relation to the operation of passenger services between a place of departure and a destination where—

(a) one or more public service contracts cover the same route or an alternative route, and

(b) the exercise of such access rights would compromise the economic equilibrium of the public service contract or contracts in question.";

(e) omit paragraph (7); and

(f) in paragraph (9) for "or regulation 33" substitute "and regulation 33".

Infrastructure management: independence; outsourcing and sharing functions and impartiality in respect of traffic management and maintenance planning

5. After regulation 8 (management independence) insert—

"**Independence of the infrastructure manager**

8A.—(1) Subject to paragraph (5), the infrastructure manager, in its legal form, must be independent of any railway undertaking and, in vertically integrated undertakings, also be independent of any other legal entity within the undertaking.

(2) In vertically integrated undertakings, the other legal entities must not exercise any decisive influence on the decisions of the infrastructure manager in relation to the essential functions.

(3) Members of the supervisory board and the management board, and managers reporting directly to them, must act in a non-discriminatory manner and their impartiality must not be affected by any conflict of interest.

(4) An individual must not be concurrently appointed or employed—

(a) as a member of the management board of an infrastructure manager or the head of division in charge of the management of infrastructure, and as a member of the management board of a railway undertaking or the head of division in charge of railway services;

(b) as a person in charge of taking decisions on the essential functions and as a member of the management board of a railway undertaking;

(c) where a supervisory board exists, as a member of the supervisory board of an infrastructure manager and as a member of the supervisory board of a railway undertaking;

(d) as a member of the supervisory board of an undertaking which is part of a vertically integrated undertaking and which exercises control over both a railway undertaking and an infrastructure manager and as a member of the management board of that infrastructure manager.

(5) Paragraph (1) and sub-paragraphs (c) and (d) of paragraph (4) do not apply where infrastructure charging and path allocation functions are performed by a charging body and an allocation body by virtue of regulations 14(9) and 19(4) respectively.

(6) In vertically integrated undertakings, the members of the management board of the infrastructure manager or, as the case may be, the head of division in charge of the management of infrastructure, and the persons in charge of taking decisions on the essential functions must not receive—

(a) any performance-based remuneration from any other legal entities or divisions within the vertically integrated undertaking; or

(b) any bonuses principally related to the financial performance of particular railway undertakings or, as the case may be, divisions providing railway services,

but they may be offered incentives related to the overall performance of the railway system.

(7) Where information systems are common to different entities within a vertically integrated undertaking, access to sensitive information relating to essential functions must be restricted to authorised staff of the infrastructure manager and not passed on to other entities within the vertically integrated undertaking.

Outsourcing and sharing the infrastructure manager's functions

8B.—(1) Subject to paragraphs (2) and (3), an infrastructure manager may outsource—

(a) functions to a different entity, provided the latter is not a railway undertaking, does not control a railway undertaking, or is not controlled by a railway undertaking;

(b) the execution of works and related tasks on development, maintenance and renewal of the railway infrastructure to railway undertakings or companies which control the railway undertaking, or are controlled by the railway undertaking.

(2) When outsourcing functions or the execution of works and related tasks under paragraph (1) the infrastructure manager must—

(a) ensure that no conflicts of interest arise and that the confidentiality of commercially sensitive information is guaranteed; and

(b) except where the functions and obligations pass to a charging or allocation body by virtue of regulations 14(9) and 19(4) respectively, retain the supervisory power over, and bear ultimate responsibility for, the exercise of the functions described in the definition of "infrastructure manager" set out in regulation 3 (interpretation).

(3) Within a vertically integrated undertaking, the infrastructure manager must not outsource essential functions to any other entity of the vertically integrated undertaking under paragraph (1)(a), unless that entity exclusively performs essential functions.

(4) Any entity carrying out essential functions which have been outsourced under paragraph (1)(a) must comply with regulations 8A, 8C, 9A, 14(9) and 19(4).

(5) Provided that compliance by the infrastructure manager with its obligations concerning the development of the network in regulations 11 and 12 and 15(1) is ensured, a power supply operator which does not carry out any essential functions is exempt from any provisions of these Regulations that apply to infrastructure managers.

(6) Infrastructure management functions may be performed by different infrastructure managers, including parties to public-private partnership arrangements, provided that each infrastructure manager fulfils the obligations under regulations 8A, 8C, 9A, 14(9) and 19(4) and assumes full responsibility for the exercise of the functions assigned to it.

(7) Subject to supervision by the Office of Rail and Road, an infrastructure manager may conclude cooperation agreements with one or more railway undertakings provided that these are non-discriminatory and concluded with a view to delivering benefits to customers such as reduced costs or improved performance on the part of the network covered by the agreement.

Impartiality of the infrastructure manager in respect of traffic management and maintenance planning

8C.—(1) The infrastructure manager must exercise the functions of traffic management and maintenance planning in a transparent and non-discriminatory manner and ensure that the persons in charge of taking decisions in respect of those functions are not affected by a conflict of interest.

(2) As regards traffic management, the infrastructure manager must ensure that railway undertakings, in cases of disruption concerning them, have full and timely access to relevant information.

(3) Where the infrastructure manager grants further access to the traffic management process, it must do so for the railway undertakings concerned in a transparent and non-discriminatory way.

(4) The infrastructure manager must carry out the scheduling of maintenance works in a non-discriminatory way.

(5) As regards the long-term planning of major maintenance or renewal of the railway infrastructure, the infrastructure manager must consult applicants and, so far as reasonably practicable, take into account any concerns expressed.”.

Financial transparency

6. After regulation 9 (separation of accounts) insert—

“**Financial transparency**

9A.—(1) Infrastructure managers must not use income from infrastructure network management activities, including any such income that has been provided from public funds, for any purposes other than to finance the business of the infrastructure manager.

(2) Financing the business of the infrastructure manager may include the servicing of the infrastructure manager’s loans and the payment of dividends to its shareholders provided that the income is not used to pay dividends to undertakings within a vertically integrated undertaking which exercise control over both a railway undertaking and the infrastructure manager.

(3) Infrastructure managers must not grant loans to railway undertakings, either directly or indirectly.

(4) Railway undertakings must not grant loans to infrastructure managers, either directly or indirectly.

(5) Loans between legal entities of a vertically integrated undertaking may only be granted, disbursed and serviced at market rates and on conditions which reflect the individual risk profile of the entity concerned.

(6) Other legal entities within a vertically integrated undertaking may only provide services to the infrastructure manager if those services are provided on a contractual basis and paid for at market rates or at prices which reflect the cost of production, plus a reasonable margin of profit.

(7) Debts attributed to the infrastructure manager must be—

(a) clearly separated from debts attributed to other legal entities within vertically integrated undertakings; and

(b) serviced separately from debts attributed to other legal entities within vertically integrated undertakings,

but, this does not prevent the final payment of debts being made via an undertaking which is part of a vertically integrated undertaking and which exercises control over both a railway undertaking and an infrastructure manager, or via another entity within the undertaking.

(8) Within vertically integrated undertakings, the infrastructure manager must keep detailed records of any commercial and financial relations with the other legal entities within that undertaking.

(9) In vertically integrated undertakings, the infrastructure manager and other legal entities must keep their accounts in a way that ensures fulfilment of the requirements of this regulation and allows for separate accounting and transparent financial circuits within the undertaking.

(10) Where essential functions are performed by a charging or allocation body in accordance with regulation 14(9) or 19(4), the provisions of this regulation apply to that body and references in this regulation to an infrastructure manager, a railway undertaking or another legal entity of a vertically integrated undertaking are to be taken as references to the respective divisions of the undertaking in question.

(11) In the case referred to in paragraph (10), compliance with the requirements set out in this regulation must be demonstrated in the separate accounts of the respective divisions of the undertaking.

(12) This regulation does not apply to private infrastructure managers that are party to a public-private partnership concluded before 24th December 2016 where—

(a) the infrastructure manager does not receive any public funds; and

(b) any loans or financial guarantees operated by the infrastructure manager do not directly or indirectly benefit specific railway undertakings.

(13) Loans between entities of a vertically integrated undertaking granted before 24th December 2016 may continue until their maturity, provided that they were contracted at market rates and that they are actually disbursed and serviced.”.

Coordination mechanisms

7. After regulation 13 (network statement) insert—

"**Coordination mechanisms**

13A.—(1) A main infrastructure manager must put in place appropriate coordination mechanisms to ensure that they coordinate, at least annually, with all interested railway undertakings as well as applicants referred to in regulation 12(3) regarding the matters set out in paragraph (3).

(2) Where relevant a main infrastructure manager must invite representatives of users of the rail freight and passenger transport services, and national, local or regional authorities to participate in the coordination required by paragraph (1) and the Office of Rail and Road may participate as an observer.

(3) The matters referred to in paragraph (1) are—

(a) the needs of applicants related to the maintenance and development of the infrastructure capacity;

(b) the content of the user-oriented performance targets contained in the agreement referred to in regulation 15(6) and of the incentives referred to in regulation 15(7) and their implementation;

(c) the content and implementation of the network statement;

(d) issues of intermodality and interoperability;

(e) any other issues related to the conditions for access, the use of the infrastructure and the quality of the services of the infrastructure manager.

(4) A main infrastructure manager must draw up and publish guidelines for the coordination required by paragraph (1) in consultation with interested parties and must publish on its website an overview of the activities undertaken pursuant to this regulation.

(5) For the purposes of this regulation—

(a) "national authorities" means the Secretary of State, the Scottish Ministers or the Welsh Ministers;

(b) "local or regional authorities" includes a combined authority established under section 103(1) of the Local Democracy, Economic Development and Construction Act 2009.

[F9]**...**

[F9]**13B.** . . . . . ".

Textual Amendments

F9 Words in Sch. 6 para. 7 omitted (31.12.2020) by virtue of The Railways (Access, Management and Licensing of Railway Undertakings) (Amendments etc.) (EU Exit) Regulations 2019 (S.I. 2019/518), regs. 1(3)(b), **24(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Independence of the essential functions

8.—(1) In regulation 14 (establishing, determining and collecting charges) after paragraph (9) insert—

"(9A) In paragraph (9) the infrastructure manager is not independent in its organisation or decision-making functions if, in particular—

(a) a railway undertaking or any other legal entity exercises a decisive influence on the infrastructure manager in relation to the infrastructure charging elements of

the essential functions, without prejudice to the charging framework and specific charging rules established pursuant to this regulation;

(b) a railway undertaking or any other legal entity within the vertically integrated undertaking has decisive influence on appointments and dismissals of persons in charge of taking decisions on the infrastructure charging elements of the essential functions; or

(c) the mobility of persons in charge of the infrastructure charging elements of the essential functions creates a conflict of interest.".

(2) In regulation 19 (capacity allocation) after paragraph (4) insert—

"(4A) In paragraph (4) the infrastructure manager is not independent in its organisation or decision-making functions if, in particular—

(a) a railway undertaking or any other legal entity exercises a decisive influence on the infrastructure manager in relation to the train path allocation elements of the essential functions, without prejudice to the allocation framework established pursuant to this regulation;

(b) a railway undertaking or any other legal entity within the vertically integrated undertaking has decisive influence on appointments and dismissals of persons in charge of taking decisions on the train path allocation elements of the essential functions; or

(c) the mobility of persons in charge of the train path allocation elements of the essential functions creates a conflict of interest.".

Capacity rights

9. In regulation 19 (capacity allocation)—

(a) in paragraph (7)—

(i) for "an international" substitute "a"; and

(ii) at the end of the sentence insert "at least 18 months before the entry into force of the working timetable to which the request for capacity relates"; and

(b) in paragraph (8)—

(i) after "it must" insert ", without undue delay and at the latest within 10 days of receiving the notice,"; and

(ii) in sub-paragraph (c) omit "international".

Special measures to be taken in the event of disruption

10. In regulation 30 (special measures to be taken in the event of disruption)—

(a) after paragraph (2) insert—

"(2A) In the event of disruption which has the potential to affect cross-border traffic, the infrastructure manager must share any relevant information with other infrastructure managers whose network or traffic may be affected and the infrastructure managers concerned must cooperate to restore cross-border traffic to normal.";

(b) after paragraph (3) insert—

"(3A) Railway undertakings operating passenger services must put in place contingency plans and must ensure that these contingency plans are properly coordinated to provide passengers with assistance in the sense of Article 18 of Regulation (EC) No 1371/2007, in the event of major disruption to services.".

Appeals to the regulatory body

11. In regulation 32 (appeals to the regulatory body) in paragraph (2)—

(a) at the end of sub-paragraph (f) omit "and";

(b) at the end of sub-paragraph (g) for the full stop substitute a semi-colon; and

(c) after sub-paragraph (g) insert—

"(h) traffic management;

(i) renewal planning and scheduled or unscheduled maintenance; and

(j) compliance with the requirements, including those regarding conflicts of interest, set out in regulations 8A, 8B, 8C, 9A, 14(9) and 19(4).".

Regulatory decisions concerning passenger services

12.—(1) In the heading to regulation 33 (regulatory decisions concerning international passenger services) omit "international".

(2) In regulation 33—

(a) omit paragraphs (1) and (2);

(b) in paragraph (3)—

(i) for "The" at the beginning of the paragraph, substitute "At the request of a relevant party submitted within one month of receipt from the Office of Rail and Road of the information on the intended passenger service referred to in regulation 19(8), the"; and

(ii) in sub-paragraph (a) omit "at the request of a relevant party and";

(c) in paragraph (4)(b) omit "international";

(d) in paragraphs (5) and (6)(b) for "paragraph (3)(a)" substitute "paragraph (3)";

(e) for paragraph (6)(d) substitute—

"(d) provide the relevant parties and any railway undertaking seeking access for the purpose of operating a passenger service with—

(i) the grounds for its decision;

(ii) the conditions under which any of those parties may request a reconsideration of the decision or direction or both; and

(iii) where paragraph (6)(c) applies, an indication of possible changes to the service which would ensure that the conditions to grant the right of access provided for in regulation 5 are met.";

(f) after paragraph (6) insert—

"(6A) A request for a reconsideration in accordance with paragraph (6)(d)(ii) must be made within one month of receipt of the information referred to in paragraph (6)(d).";

(g) in paragraphs (7) and (8) after "(6)(d)" insert "(ii) and (6A)".

Monitoring the rail services markets

13. In regulation 34 (monitoring the rail services markets)—

(a) in paragraph (1) after "rail services markets" insert ", including the market for high-speed passenger services and the activities of infrastructure managers in relation to the matters referred to in regulation 32(2)";

(b) in paragraph (2)(a) for "control" substitute "verify compliance with" and delete the word "and" at the end;

(c) in paragraph 2(b) replace the full stop at the end with a semicolon; and

(d) after paragraph (2)(b) insert—

"(c) monitor the use of income referred to in regulation 9A(1), the servicing of debts and payment of dividends referred to in regulation 9A(2), the loans referred to in regulation 9A(5) and the debts referred to in regulation 9A(7); and

(d) assess, and monitor the execution of any cooperation agreements concluded between an infrastructure manager and one or more railway undertakings and, where justified, may advise that a cooperation agreement should be terminated.".

Audits

14. In regulation 35 (audits)—

(a) in paragraph (1) after "provisions laid down in regulation 9" insert "and the provisions on financial transparency laid down in regulation 9A"; and

(b) after paragraph (3) insert—

"(3A) In the case of vertically integrated undertakings, the powers of the Office of Rail and Road under this regulation extend to all legal entities within the vertically integrated undertaking.".

Cooperation between regulatory bodies

[F10]15. . . . . . .

Textual Amendments

F10 Sch. 6 para. 15 omitted (31.12.2020) by virtue of The Railways (Access, Management and Licensing of Railway Undertakings) (Amendments etc.) (EU Exit) Regulations 2019 (S.I. 2019/518), regs. 1(3)(b), **24(c)**; 2020 c. 1, Sch. 5 para. 1(1)

Enforcement of decisions, directions and notices

16. In regulations 38 (enforcement of decisions, directions and notices), in paragraph (2)(a)(ii), for "regulation 32(2)(c) to (g)" substitute "regulation 32(2)(c) to (j)".**]**

Changes to legislation:
There are currently no known outstanding effects for the The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016.