

## SCHEDULE 2

Regulations 13, 14, 16 and 17

### 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 infrastructure.
- (3) Except where specific arrangements are made in accordance with paragraph 3, the infrastructure manager must ensure that the charging scheme 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 1 shall be set at the cost that is directly incurred as a result of operating the train service.
- (5) From 2 August 2019 or earlier, the infrastructure manager must calculate the cost under sub-paragraph (4) in accordance with the Commission Implementing Regulation (EU) 2015/909 of 12<sup>th</sup> June 2015 on the modalities for the calculation of the cost that is directly incurred as a result of operating the train service<sup>M1</sup>.
- (6) The charge imposed for track access within service facilities referred to in paragraph (2) of Schedule 1 and the supply of service 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 1 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 subparagraph (4) and (8) may be averaged over a reasonable spread of train services and times, but the relevant magnitudes of the infrastructure charges must be related to the costs attributable to the services.

#### Marginal Citations

**M1** O.J. No. L148, 13.6.15, 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 Department, 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.

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(2) The effect of sub-paragraph (1) must not be to exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear.

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

(4) Before approving the levy of a mark-up under sub-paragraph (1) the Department 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 (9) and retaining the relevant ones.

(5) The list of market segments to be considered by the infrastructure manager under sub-paragraph (3) must contain at least the three following segments: freight services, passenger services within the framework of a public service contract and other passenger services.

(6) In addition to the market segments considered under paragraph (4) the infrastructure manager may consider further market segments according to commodity or passengers transported.

(7) 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.

(8) 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.

(9) The pairs referred to in subparagraph (3) 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,
- (g) regular versus occasional train services.

3.—(1) Subject to subparagraph (2), for specific investment projects completed—

- (a) after 15th March 1988; or
- (b) following the coming into operation 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 subparagraph (1) to apply—

- (a) the project must increase the 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 subparagraph (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 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 subparagraph (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) <sup>F1</sup>... Notwithstanding paragraph 1(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 subparagraph (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 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 underutilised lines.

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

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

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

### Textual Amendments

**F1** Words in Sch. 2 para. 6(1) omitted (31.12.2020) by virtue of [The Railways \(Amendment\) \(EU Exit\) Regulations \(Northern Ireland\) 2019 \(S.I. 2019/826\)](#), regs. 1(2), 27; 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. 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,
- (vi) other causes;

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- (b) 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,
  - (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,
  - (iv) other causes;
- (d) causes attributable to other infrastructure managers—
  - (i) caused by previous infrastructure manager,
  - (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,
  - (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,
  - (vii) other causes;
- (g) causes attributable to other railway undertakings—
  - (i) caused by next railway undertaking,
  - (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,

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- (iv) effects of weather and natural causes,
  - (v) delay due to external reasons on the next network,
  - (vi) other causes; and
- (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,
  - (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.

**Changes to legislation:**

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