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STATUTORY INSTRUMENTS

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**1994 No. 608**

**TRANSPORT**

**The Railways (Amendment) Regulations 1994**

<i>Made</i>	- - - -	<i>8th March 1994</i>
<i>Laid before Parliament</i>		<i>8th March 1994</i>
<i>Coming into force</i>	- -	<i>31st March 1994</i>

The Secretary of State for Transport, being a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures relating to the management independence of railway undertakings, their financial structure, the separation of accounts for rail infrastructure and transport services, fees for the use of infrastructure and arrangements for access to infrastructure, in exercise of the powers conferred by that section, hereby makes the following Regulations:

1. These Regulations may be cited as the Railways (Amendment) Regulations 1994 and shall come into force on 31st March 1994.

2. The Railways Regulations 1992<sup>(3)</sup> shall be amended in accordance with the following provisions of these Regulations.

3. In regulation 2 (Purpose and interpretation), for paragraph (2) there shall be substituted the following paragraph:—

“(2) In these Regulations—

“the Concessionaires”, “the tunnel system” and “shuttle service” have the same meaning as in the Channel Tunnel Act 1987<sup>(4)</sup>;

“the International Rail Regulator” means the officer appointed under regulation 7(1) by the Secretary of State;

“access and transit rights” or “transit rights” means access and transit rights or transit rights in relation to railway infrastructure;

“railway infrastructure” means railway facilities and ancillary services;

“United Kingdom National” means an individual who is—

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(1) S.I. 1992/707.

(2) 1972 c. 68, as amended by 1979 c. 57, 1986 c. 58 and 1993 c. 32.

(3) S.I. 1992/3060.

(4) 1987 c. 53.

- (a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen,
  - (b) a person who under the British Nationality Act 1981<sup>(5)</sup> is a British subject, or
  - (c) a British protected person (within the meaning of that Act);
- and expressions used which are also used in Part I of the Railways Act 1993<sup>(6)</sup> have the same meaning.”,

and in paragraph (3) at the end for the full stop there shall be inserted “; and” and there shall be added the following sub-paragraph:—

“(c) a numbered rule is a reference to the rule in Schedule 1 bearing that number.”.

4. Regulation 4 (Modification of enactments concerning the powers of the Secretary of State and the obligations of the British Railways Board) shall be deleted.

5. In regulation 6 (Calculation of, and rules for the determination of, fees for the use of railway infrastructure), in paragraph (1) the words from “and may, in particular” to the end shall be deleted and for paragraph (2) there shall be substituted the following paragraphs:—

“(2) The fees shall be determined in accordance with the rules in Schedule 1 and, in relation to a fee to be charged under an agreement which is an access contract entered into pursuant to directions under section 17 or 18 of the Railways Act 1993, it shall fall to the Regulator, in consultation with the infrastructure manager and the person by whom the fee is payable or a person acting on his behalf, to determine the fee in accordance with those rules as if in rules 2, 3 and 4 the references to an amount determined by agreement were references to an amount determined by the Regulator in consultation with those persons.

(3) The rules in Schedule 1 apply to the determination of fees on the conclusion, modification or renewal of agreements for the use of railway infrastructure.”.

6. In regulation 8 (Access and transit rights), in paragraph (3) after the words “On an application under paragraph (1) or (2)” there shall be inserted the words “and on payment of the charge specified in paragraph (3A)” and after paragraph (3) there shall be inserted the following paragraph:—

“(3A) The infrastructure manager may require the payment of a charge to cover his reasonable costs of dealing with the application.”.

7. In regulation 9 (Appeals and disputes)

(a) after paragraph (1) there shall be inserted the following paragraph:—

“(1A) In the event of a dispute concerning the charge required by the infrastructure manager to be paid under paragraph (3A) of regulation 8, the applicant international grouping or railway undertaking may by notice in writing appeal to the International Rail Regulator.”:

(b) in paragraph (2) after the words “notice of appeal” there shall be inserted the words “under paragraph (1) or (1A)”;

(c) after paragraph (3) there shall be inserted the following paragraph:—

“(3A) On an appeal under paragraph (1A), the International Rail Regulator, after considering the representations of the appellant and infrastructure manager, shall determine the amount of the charge and his determination shall be binding upon parties to the dispute.”; and

(d) after paragraph (4) there shall be inserted the following paragraph:—

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(5) 1981 c. 61.

(6) 1993 c. 43.

“(4A) In relation to a matter referred under paragraph (4) concerning the determination of the amount of the fee to be charged for the use of railway infrastructure the rules in Schedule 1 shall have effect as if in rules 2, 3 and 4 the references to an amount determined by agreement were references to an amount determined by the International Rail Regulator.”

**8.** For the rules specified in Schedule 1 (Rules for the determination of fees charged for the use of railway infrastructure) there shall be substituted the following rules:—

“**1.** Subject to rules 2, 3 and 4, a fee for the use of infrastructure shall include, and shall include only:

- (a) an amount equal to the estimated costs reasonably attributable to the operation of trains in pursuance of the agreement under which the fee is payable; and
- (b) an amount determined in accordance with rule 2 in respect of a share of estimated common costs.

**2.** The amount referred to in rule (1)(b) shall be such amount as may be determined by agreement between the infrastructure manager and the person by whom the fee is payable or a person acting on his behalf.

**3.** A fee may be increased or decreased by an amount determined by agreement between the infrastructure manager and the person by whom the fee is payable or a person acting on his behalf to take account of special or exclusive rights to use the infrastructure granted to the person by whom the fee is payable or to any other person.

**4.** A fee may be increased or decreased, in accordance with any performance incentive regime agreed between the infrastructure manager and the person by whom the fee is payable or a person acting on his behalf, by an amount so determined.

**5.** In this Schedule—

“common costs” means the costs incurred by the infrastructure manager in operating his railway infrastructure which are not attributable to the operation of trains on that infrastructure by any particular railway undertaking or international grouping;

“costs” include the costs of operating the control and safety systems, of providing or renewing capital assets, of a rate of return on capital invested in the infrastructure, of the payment of value added tax and administrative costs and other overheads; and

“infrastructure” means railway infrastructure.”.

Signed by authority of the Secretary of State for Transport

Department of Transport  
8th March 1994

*Roger Freeman*  
Minister of State,

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

These Regulations amend the Railways Regulations 1992 (“the 1992 Regulations”) which implement Council Directive [91/440/EEC](#) of 29th July 1991 on the development of the Community’s railways (OJNo. L237, 24.8.91, p.25) (“the Directive”).

They take account of the coming into force of certain provisions of the Railways Act 1993.

Regulation 4 of the 1992 Regulations (Modification of enactments concerning the powers of the Secretary of State or the obligations of the British Railways Board) is deleted (Regulation 4).

In accordance with article 8 of the Directive, they lay down new rules for the determination of fees to be charged for the use of railway infrastructure (Regulations 5, 7(d) and 8). The rules apply to the determination of fees on the conclusion, modification or renewal of agreements for the use of railway infrastructure.

They also enable the infrastructure manager to whom an application is made under regulation 8 of the 1992 Regulations for access or transit rights (as defined in regulation 2(2) of the 1992 Regulations) to require the payment of a charge to cover his reasonable costs of dealing with the application (Regulation 6). Provision is made for an appeal by the applicant to the International Rail Regulator (as defined in regulation 2(2) of the 1992 Regulations) concerning the charge required to be paid (Regulation 7(a) to (c)).