

**2009 No. 222**

**TRANSPORT**

**The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations (Northern Ireland) 2009**

*Made - - - - - 2nd June 2009*

*Coming into operation in accordance with regulation 1(1)*

The Department for Regional Development(**a**) being a Department(**b**) designated for the purposes of section 2(2) of the European Communities Act 1972(**c**) in relation to measures relating to railways and railway transport, in exercise of the powers conferred by that section and paragraph 1A of Schedule 2 to that Act makes the following Regulations:

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Department that it is expedient for any reference to Regulation (EC) No 1370/2007 of the European Parliament and of the Council(**d**) to be construed as a reference to that Regulation as amended from time to time.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Railways Infrastructure (Access and Management) (Amendment) Regulations (Northern Ireland) 2009 and come into operation—

- (a) for the purposes of this regulation and regulation 2(2)(e) (f), (4), (5), (6), (7) (10) and (11), on 1st July;
- (b) for all other purposes on 1st January 2010.

(2) The Interpretation Act (Northern Ireland) 1954(**e**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

**Amendment of the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005**

**2.**—(1) The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005(**f**) are amended as follows.

- (2) In regulation 2 (interpretation)—
  - (a) for the definition of “access and transit rights” or “transit rights” substitute—

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(a) S.I. 1999/283  
(b) S.I. 1996/266  
(c) 1972 c. 68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a); paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and paragraph 2(2) was amended by section 27(2) of the 2006 Act. The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) of the 1972 Act by section 1 of the European Economic Area Act 1993 (c. 51)  
(d) O.J. L315, 3.12.07, p. 1. These Regulations enter into force on 3 December 2009  
(e) 1954 c. 33 (N.I.)  
(f) S.R. 2005 No. 537

- “access right” means rights of access to railway infrastructure for the purpose of operating a service for the transport of goods and/or passengers;”;
- (b) in the definition of “applicant”—
- (i) at the end of sub-paragraph (a), insert “or”;
  - (ii) omit sub-paragraph (b);
  - (iii) in sub-paragraph (c) omit the words “, in particular public authorities under Regulation (EEC) No 1191/69 and shippers, freight-forwarders, and combined transport operators”;
- (c) after the definition of “charging scheme” insert—
- ““competent authority” has the same meaning as in Article 2 of Regulation (EC) No 1370/2007, as amended from time to time;”;
- (d) “charging body” means a body or undertaking, other than the infrastructure manager, which is responsible, by virtue of regulation 11(4), for the functions and obligations of the infrastructure manager under Part 4 and Schedule 2;
- (e) in the definition of “Council Directives”—
- (i) in sub-paragraph (a) for the words after “Directive 2001/12/EC(a)” to the end of that sub-paragraph, substitute—
 

“,Directive 2004/51/EC (b) dated 29th April 2004 and Directive 2007/58/EC(c) dated 23rd October 2007, all of the European Parliament and of the Council and”;
  - (ii) in sub-paragraph (b) for after the words “Council Directive 2004/49/EC(d)” insert—
 

“and Directive 2007/58/EC dated 23rd October 2007, all of the European Parliament and of the Council;”;
- (f) after the definition of “infrastructure manager” insert—
- ““public passenger transport” has the meaning as in Article 2 of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007(e), as amended from time to time;
- “public service contract” has the same meaning as in Article 2 of Regulation (EC) No 1370/2007, as amended from time to time;
- “public service operator” has the same meaning as in Article 2 of Regulation (EC) No 1370/2007, as amended from time to time;”;
- (g) after the definition of “railway infrastructure” insert—
- “Regulation (EC) No 1370/2007” means Regulation (EC) No 1370/2007 of the European Parliament and the Council of 23rd October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70;
- ““relevant public service contract” means a public service contract under which a relevant public service operator provides public passenger transport, the route or routes of which overlap with the route of the international passenger service notified to the Department under regulation 16(4A);
- “relevant public service operator” means a public service operator providing public passenger transport, the route or routes of which overlap with the route of the international passenger service notified to the Department under regulation 16(4A);”;
- (h) omit the definition of “transit rights”.
- (3) For regulation 4 (access and transit rights) substitute—

#### “Access rights

**4.—(1)** A railway undertaking is entitled on equitable conditions to such access as may be necessary for the purpose of the operation of any type of rail freight service or international passenger service.

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(a) O.J. No. L175, 15.3.01, p. 1  
 (b) O.J. 1164, 30.4.04, p. 16  
 (c) O.J. L315 03.12.07, p. 44  
 (d) O.J. No. L164, 30.4.04, p. 58  
 (e) O.J. L315, 3.12.07, p. 1

(2) Subject to paragraph (3), the access rights of a railway undertaking for the purpose of the operation of an international passenger service includes the right to pick up passengers at any station and set them down at another, including stations located in the same Member State.

(3) The rights conferred by paragraphs (1) and (2) are exercisable subject to the provisions of regulation 27A.

(4) It is the duty of the infrastructure manager to ensure that the entitlements conferred by this regulation are honoured.

(5) Without prejudice to the generality of regulation 27, if a railway undertaking is denied the entitlements conferred on it by this regulation other than pursuant to a decision of the Department under regulation 27A, that railway undertaking has a right of appeal to the Department in accordance with regulation 27.”.

(4) In regulation 15 (capacity allocation), insert after paragraph (4)—

“(4A) An applicant that applies for infrastructure capacity with a view to operating an international passenger service must give notice of that fact to the infrastructure manager concerned and the Department and provide them with such information as the Department may reasonably require or prescribe.

(4B) When the Department receives a notice from an applicant under paragraph (4A), it must provide any competent authority that has awarded a rail passenger service defined in a relevant public service contract and any railway undertaking which is a relevant public service operator and any other competent authority with a right to limit access along the route or routes of the international passenger service notified under paragraph 4A with a copy of the information in relation to the proposed international passenger service furnished to it in accordance with that paragraph.”.

(5) In regulation 16 (framework agreements)—

(a) in paragraph (3) insert “and without prejudice to paragraph (9B)” between “applicant” and “, a framework”;

(b) in paragraph (7)—

(i) for “and (9)” substitute “, (9) and (9A)”;

(ii) after “years” at the end of the paragraph insert “, renewable for periods equal to its original duration; provided that the infrastructure manager may agree to a shorter or longer period in specific cases.”;

(c) in paragraph (8)—

(i) before “A framework agreement” insert “Subject to paragraphs 9 and 9(A),”; and

(ii) for “of between five and ten years” substitute “longer than five years”;

(d) for paragraph (9) substitute—

“(9) Subject to paragraph (9A), a framework agreement in relation to infrastructure which has been designated in accordance with regulation 20(2) (“a designated infrastructure framework agreement”) may be for a period of up to fifteen years where there is a substantial and long-term investment duly justified by the applicant.”.

(e) after paragraph (9) insert—

“(9A) A designated infrastructure framework agreement may be for a period in excess of fifteen years in exceptional circumstances, in particular where there is large-scale and long term investment and particularly where such investment is covered by contractual commitments including a multi-annual amortisation plan.

(9B) An application for a designated infrastructure framework agreement to which paragraphs 9 or 9A applies may specify the capacity characteristics, including the frequency, volume and quality of the train paths, to be provided to the applicant for the duration of the framework agreement in sufficient detail to ensure that these are clearly established.

(9C) The infrastructure manager may reduce capacity reserved under the terms of a designated infrastructure framework agreement to which paragraphs 9 or 9A applies where, over a continuous period of at least one month, that capacity has been used less than the threshold quota stipulated in the network statement.”.

(6) After regulation 27, insert—

**“Regulatory decisions concerning international passenger services**

**27A.**—(1) The Department must at the request of a relevant competent authorities or an interested railway undertaking or may on its own initiative, determine whether a service for the transport of passengers by train is an international passenger service.

(2) The Department

- (a) must at the request of a relevant party, or may on its own initiative, determine whether the exercise of the right conferred under regulation 4 by an applicant for infrastructure capacity notified under regulation 15(4A) would compromise the economic equilibrium of a relevant public service contract; and
- (b) must make the determination on the basis of an objective economic analysis and in accordance with pre-determined criteria published by it.

(3) For the purposes of paragraphs (1) and (2) relevant parties are the competent authority that awarded a relevant public service contract, any other competent authority with a right to limit access along the route of the international passenger service notified under regulation 15(4A), any railway undertaking which is a relevant public service operator and the infrastructure manager concerned.

(4) The Department must, within two months of the date of receipt of all relevant information (including information provided pursuant to regulation 29) and having consulted the relevant parties, as appropriate —

- (a) make a decision on a request made or following a decision on its own initiative under paragraph (2);
- (b) where appropriate, issue a direction or directions to the infrastructure manager, allocation body, charging body, service provider or, as the case may be, railway undertaking, limiting the access rights conferred in a framework agreement if the exercise of the rights would compromise the economic equilibrium of a relevant public service contract;
- (c) provide the relevant parties and any railway undertaking seeking access rights to infrastructure for the purpose of operating an international passenger service with the grounds for its decision; and
- (d) specify a reasonable time period within which, and the conditions under which, any competent authority that has awarded a relevant public service contract, any railway undertaking which is a relevant public service operator, the infrastructure for the purpose of operating an international passenger service manager concerned, and any railway undertaking seeking access rights to infrastructure may request a reconsideration of the decision or direction or both;

(5) Where the Department has received a properly made request for a reconsideration of its decision or direction in accordance with paragraph (4)(d) any direction it has made under paragraph (4)(b) will not take effect pending reconsideration.

(6) Where the Department has received a properly made request for a reconsideration of its decision or direction under paragraph (2) in accordance with paragraph (4) (d), any direction it has made under paragraph (4)(b) it must, within two months of the date of receipt of all relevant information (including information provided pursuant to regulation 29)—

- (a) make a reconsidered decision on a request; and
- (b) where appropriate, issue or reissue a direction or directions to the infrastructure manager, allocation body, charging body, service provider or, as the case may be, railway undertaking;

(7) In making a decision on a request made or following a decision to consider on its own initiative under paragraph (2), or a request for a reconsideration of its decision under paragraph (5), the Department must either—

- (a) confirm that no modification of the infrastructure manager or allocation body’s decision to award access rights is required; or
- (b) require modification of that decision in accordance with directions issued by the Department.

- (8) Without prejudice to the right of any person to make an application to the court under Order 53 of the Rules of the Supreme Court (Northern Ireland) 1980(a)—
- (a) a decision by the Department on a request made or following a decision to consider on its own initiative under paragraph (2) is binding on all parties affected by that decision; and
  - (b) it is the duty of any person to whom a direction is given under this regulation to comply with and give effect to that direction.”
- (7) In regulation 29 (provision of information to the regulatory body) for “27 or 28” substitute “12, 27, 27A or 28”.
- (8) In regulation 39 (statutory authority to run trains), omit “international grouping or” and “or transit”.
- (9) Regulation 40 (international grouping) is revoked.
- (10) In regulation 41 (civil proceedings)—
- (a) in paragraph (1) after sub-paragraph (e) insert—
    - “or;
    - (f) paragraph (8) of regulation 27A,”; and
  - (b) in paragraph (2) omit “international grouping”.
- (11) In Schedule 2 (access charging)—
- (a) for paragraph 3(2)(a) substitute—
    - “(a) the project must increase efficiency or cost-effectiveness; and”;
  - (b) in paragraph (6)
    - (i) in sub-paragraph (1) insert “notwithstanding” between “the Treaty, and” and “paragraph 1(2)”;
    - (ii) in sub-paragraph (3) between “services, or” and “encouraging the” insert “discounts”.

Sealed with the Official Seal of the Department for Regional Development on 2nd June 2009.

(L.S.)

*B. R. D. White*  
A senior officer of the Department

## EXPLANATORY NOTE

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

These Regulations implement the provisions of European Parliament and Council Directive 2007/58/EC (O.J. No. L315, 3.12.07, p. 44) of 23rd October 2007 amending Council Directive 91/440/EC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure.

These Regulations amend the provisions of The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 (S.R. 2005/537) ("the 2005 Regulations") to liberalise international passenger services. They also amend the requirements for framework agreements.

Regulation 2(2) amends a number of definitions in the 2005 Regulations.

Regulation 2(3) substitutes the provision on access rights in the 2005 Regulations extending the provisions to international passenger services and adding the right to pick up passengers at any station and set them down at another including within the same Member State. The Department is given authority to limit access rights for international passenger services in certain circumstances.

Regulations 2(2), (9) and (11) remove references to "international groupings" from the 2005 Regulations enabling the Regulations to cover any international passenger service.

Regulation 2(4) places a requirement on an applicant wanting to operate an international passenger service to give notice to the infrastructure manager and the Department in relation to that application. The Department must provide a copy of this information to certain specified parties.

Regulation 2(5) sets new durations for framework agreements and specifies the conditions that must be met to allow their extension beyond a period of five years.

Regulation 2(6) inserts a new provision in the 2005 Regulations enabling the Department to decide whether a service is an international passenger service and to decide, on the request of certain parties or on its own initiative, whether such service would compromise the economic equilibrium of a relevant public service contract. In making a decision in relation to that service the Department may issue a direction to limit access rights where appropriate. It also provides that specified parties may make a request for reconsideration of a decision or direction of the Department. The Department will publish the criteria to be used for this assessment. It also permits any person to make an application to the Court to appeal a decision.

Regulation 2(7) inserts references to Directive 2007/58/EC.

Regulations 2(8) remove reference to "international groupings" and "transit rights" from the 2005 Regulations.

Regulations 2(9) revokes regulation 40 (international grouping) of the 2005 Regulations.

Regulation 2(10) makes a breach of an obligation to comply with a decision or direction of the Department under Regulation 27A actionable by persons sustaining loss, damage or injury caused by that breach and enforceable by the Department by way of civil proceedings.

Regulation 2(11) corrects a linguistic error in the 2005 Regulations where the English text of Article 8.2 of Directive 2001/14/EC differs from that of the French and German texts.

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