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STATUTORY RULES OF NORTHERN IRELAND

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**2009 No. 222**

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

**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<sup>(1)</sup> are amended as follows.

(2) In regulation 2 (interpretation)—

(a) for the definition of “access and transit rights” or “transit rights” substitute—

““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(2)” to the end of that sub-paragraph, substitute—

“,Directive 2004/51/EC(3) dated 29th April 2004 and Directive 2007/58/EC(4) 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(5)” 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—

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(1) S.R. 2005 No. 537

(2) O.J. No. L.175, 15.3.01, p. 1

(3) O.J. 1164, 30.4.04, p. 16

(4) O.J. L.315 03.12.07, p. 44

(5) O.J. No. L164, 30.4.04, p. 58

““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(6), 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 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.

(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),”;
    - (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 manager 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(7)—

- (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)”; and
    - (ii) in sub-paragraph (3) between “services, or” and “encouraging the” insert “discounts”.