

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012, establishing a single European railway area (Recast) (O.J. No. L343, 14.12.12, p.32) (“the Directive”). The Directive repeals 3 key EU measures: (i) Council Directive 91/440/EEC of 29 July 1991 on the development of the communities railways (O.J. No. L237, 24.8.1991, p.25); (ii) Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (O.J. No. L143, 27.06.1995, p.70); and (iii) Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (O.J. No. L75, 5/03/2001, p.29), together with the various Directives amending these and consolidates these provisions in one place. The Directive also makes some substantive changes to the consolidation legal obligations, although most of these remain unchanged.

Part 1 contains preliminary provisions.

Part 2 Regulations 4 to 7 and Schedule 1 grant access rights to operators of international passenger and freight services to the Northern Ireland rail network. It also grants all applicants the right of access to, and the supply of, the services listed in Schedule 1 to these Regulations.

Part 3 Regulations 8 to 13 impose certain separation requirements between infrastructure managers and railway undertakings. Regulation 10 imposes new provisions relating to independence and accounts where service providers are under direct or indirect control of dominant bodies or firms. Regulation 11 provides for the publication of an indicative railway infrastructure strategy. Regulation 12 requires the drawing up of a business plan by infrastructure managers, and applicants are given the opportunity to comment on a draft. Railway undertakings must also draw up a business plan. Infrastructure managers are placed under a requirement to produce a network statement containing the information set out in Regulation 13, the detailed content of which has been expanded. New provisions in this Part include a requirement that separate accounts are published for rail freight transport businesses and passenger transport businesses respectively, with strengthened provisions regarding the separate treatment of public funds provided for public services.

Part 4 Regulations 14 to 18, together with Schedule 2, set out the structure for the charging of fees for use of railway infrastructure, and the charging principles. Regulation 14 requires service providers to charge fees which must be used to fund their business. Regulation 15 contains information on infrastructure costs and accounts. Regulation 16 contains details of the performance scheme. Regulation 17 provides further provisions as to the calculation of payments under performance schemes, and allows for a dispute resolution system. Regulation 18 permits a charge to be imposed for regular non-usage of allocated train paths. Schedule 2 sets out principles of access charging and the charges for the supply of such services must not exceed the costs of providing them, plus a reasonable profit. Paragraph 2 of this Schedule requires the infrastructure manager to evaluate the relevance of any mark-up charges for different market segments. Paragraph 7 of this Schedule imposes new principles to apply to performance schemes.

Part 5 Regulations 19 to 30, together with Schedule 3, set out the framework and timetable for the process of allocating infrastructure capacity. The trading of capacity is prohibited, and allocation in the form of fixed train paths cannot be granted for longer than one timetable period. This part sets out the procedure that must be followed where an element of the railway infrastructure is congested and provides a ‘use it or lose it’ provision in respect of allocated capacity.

Part 6 Regulations 31 to 37; allocate certain regulatory functions to the Office of Rail and Road (“ORR”). Regulation 32 provides a right of appeal to the ORR for applicants aggrieved with various aspects of the allocation of capacity and the fees charged for the use of that capacity, and

Changes to legislation: *There are currently no known outstanding effects for the The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016. (See end of Document for details)*

requires the ORR to make a decision on such appeals within two months. Regulation 34 requires the ORR to monitor competition in the rail services market and to take appropriate action to deal with undesirable developments in the market either arising out of its own investigations, or from appeals which have been submitted. Regulation 35 gives the ORR the power to audit various bodies, and makes clear that its power to request information under Regulation 36 includes a power to request the information listed in Schedule 5. Regulation 37 provides for cooperation between regulatory bodies.

Part 7 Regulations 38 to 42, set out the arrangements for enforcement by the regulatory bodies. This includes the power to issue directions when required, the procedures to be followed for such directions and the enforcement arrangements.

Part 8 Regulations 43 to 47, impose requirements for licensing of railway undertakings; the provision of train services without having a European licence is made a criminal offence (Regulation 43). The Department is appointed as the body to issue European licences (Regulation 44). Applicants for such licences must satisfy requirements as to good repute, professional competence, financial fitness and insurance cover for liabilities (Regulation 46 and Schedule 4). Such licences are valid as long as the licence holder complies with the requirements referred to in Schedule 4 and the requirements to submit the licence for review or approval (Regulation 45). The licence is subject to monitoring and review by the Department, who may suspend or revoke such licences in certain circumstances (Regulation 46).

Part 9 Regulations 48 to 52, provide for Statements of National Regulatory Provisions (SNRP's). In addition to requiring a European licence, railway undertakings providing services in Northern Ireland will require a Statement of National Regulatory Provisions (Regulation 49). One or more conditions will be included in a SNRP by the Department, but these conditions must be compatible with Community law and must not be discriminatory (Regulation 51). SNRPs may be modified by consent (Regulation 52).

Part 10 Regulations 53 to 58, contain miscellaneous provisions including the provision of enforcement and penalty powers for the Office of Rail and Road and the Department in relation to the implementation of directions/ orders and compliance with these.

Schedule 5 stipulates the accounting information required by the Office of Rail and Road.

Changes to legislation:

There are currently no known outstanding effects for the The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016.