
STATUTORY RULES OF NORTHERN IRELAND

2016 No. 420

**The Railways Infrastructure (Access, Management
and Licensing of Railway Undertakings)
Regulations (Northern Ireland) 2016**

PART 6

REGULATION AND APPEALS

Regulatory decisions concerning international passenger services

33.—(1) The Office of Rail and Road must at the request of a relevant competent authority or interested railway undertaking, determine whether the principle purpose of a service is to carry passengers between stations located in different Member States.

(2) In fulfilling its function under paragraph (1), the Office of Rail and Road must follow the procedure and criteria set out in Regulation (EU) 896/2014 of 11 August 2014 on new rail passenger services⁽¹⁾.

(3) The Office of Rail and Road must—

- (a) at the request of a relevant party and in accordance with paragraphs (5) and (6) determine whether the exercise of the right conferred under regulation 4 by an applicant for infrastructure capacity notified under regulation 19(14) would compromise the economic equilibrium of a relevant public service contract; and
- (b) make the determination on the basis of an objective economic analysis and in accordance with pre-determined criteria published by it.

(4) For the purposes of paragraph (3), and (6)(d) a relevant party is—

- (a) the competent authority or authorities that awarded the public service contract;
- (b) any other competent authority with a right to limit access along the route of the international passenger service notified under regulation 19(14);
- (c) the infrastructure manager; and
- (d) the railway undertaking performing the relevant public service contract to which the request relates.

(5) Within one month of receipt of a request under paragraph (3)(a), the Office of Rail and Road must consider the information provided, and, as appropriate, ask for further relevant information from, and initiate consultation with, all relevant parties.

(6) The Office of Rail and Road must, within six weeks of receipt of all relevant information and, where appropriate, of any representations made by the Department—

- (a) complete a consultation initiated under paragraph (5) or, as the case may be, under paragraph (9) if required;

(1) O.J. No. L239, 12.8.2014, pl.

- (b) make a decision on a request made under paragraph (3);
 - (c) where appropriate, issue a direction to the infrastructure manager, allocation body, charging body, service provider or, as the case may be, railway undertaking, limiting the access rights conferred under regulation 4, if the exercise of those rights would compromise the economic equilibrium of a relevant public service contract;
 - (d) provide the relevant parties and any railway undertaking seeking access rights for the purpose of operating an international passenger service with the grounds for its decision; and specify a reasonable time period within which, and the conditions under which, any of those parties may request a reconsideration of the decision or direction or both.
- (7) Where the Office of Rail and Road has received a properly made request for a reconsideration of its decision or direction in accordance with paragraph (6)(d), any decision or direction it has made under paragraph (6) will not take effect pending reconsideration.
- (8) Where the Office of Rail and Road has received a properly made request for a reconsideration of its decision or direction in accordance with paragraph (6)(d), it must, within six weeks of the date of receipt of all relevant information and of any representations made by the Department—
- (a) make a reconsidered decision on the 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.
- (9) In making a decision on a request made under paragraph (3), or a request for a reconsideration of its decision under paragraph (6), the Office of Rail and Road 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 Office of Rail and Road.
- (10) Without prejudice to the right of any person to make an application to the Court under Order 53 of the Rules of the Court of Judicature (Northern Ireland) 1980(2)—
- (a) a decision by the Office of Rail and Road on a request made under paragraph (3) or a request for a reconsideration of its decision under paragraph (6) 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.
- (11) The procedure and criteria to be applied by the Office of Rail and Road in the performance of its functions under paragraphs (3) and (8) shall be subject to, and include, the relevant procedures and criteria set out in Commission Implementing Regulation (EU) No. 869/2014(3) of 11 August 2014 on new rail passenger services.

(2) The Rules of the Supreme Court were renamed the Rules of the Court of Judicature under para 3(3) of Schedule 11 to the Constitutional Reform Act 2005

(3) O.J. No. L239, 12.8.2014, p.1-10