
STATUTORY INSTRUMENTS

1998 No. 1340

The Railways Regulations 1998

PART I
PRELIMINARY

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Railways Regulations 1998 and shall come into force on 27th June 1998.

(2) With the exception of paragraphs 6 to 8 of Schedule 2, these Regulations do not extend to Northern Ireland.

Revocation and transitional provisions

2.—(1) The Railways Regulations 1992⁽¹⁾ and the Railways (Amendment) Regulations 1994⁽²⁾ are hereby revoked.

(2) The Railways Regulations 1992 and the Railways (Amendment) Regulations 1994 shall continue to have effect in relation to any application for access or transit rights made pursuant thereto prior to their revocation by paragraph (1).

Interpretation

3.—(1) In these Regulations—

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

“the Concessionaires”, “the tunnel system” and “shuttle service” have the same meaning as in the Channel Tunnel Act 1987⁽³⁾;

“the Council Directives” means Council Directive No. [91/440/EEC](#) of 29th July 1991 on the development of the Community’s railways⁽⁴⁾, Council Directive No. [95/18/EC](#) of 19th June 1995 on the licensing of railway undertakings⁽⁵⁾ and Council Directive No. [95/19/EC](#) of 19th June 1995 on the allocation of railway infrastructure capacity and the charging of infrastructure fees⁽⁶⁾;

(1) S.I. [1992/3060](#).

(2) S.I. [1994/608](#).

(3) [1987 c. 53](#).

(4) OJ No. L237, 24.8.91, p. 25; the text of the Directive is subject to the amendments in a corrigendum published in OJ No. L305, 6.11.91, p.22.

(5) OJ No. L143, 27.6.95, p.70. Added to Annex XIII of the EEA Agreement by Article 1 of the Decision of the EEA Joint Committee No. 71/95 of 15th December 1995 (OJ No. L57, 7.3.96, p.37).

(6) OJ No. L143, 27.6.95, p.75. Added to Annex XIII of the EEA Agreement by Article 1 of the Decision of the EEA Joint Committee No. 70/95 of 15th December 1995 (OJ No. L57, 7.3.96, p.36).

“EEA State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993(7);

“infrastructure fees” means the fees charged by infrastructure managers pursuant to regulation 7(1);

“international licence” means a licence granted to a railway undertaking pursuant to these Regulations (valid throughout the territory of any EEA State) by which the capacity of the railway undertaking as such is recognised and which authorises the undertaking to provide in and between EEA States such international services or international combined transport goods services as may be specified in the licence;

“the International Rail Regulator” means the officer appointed by the Secretary of State in accordance with regulation 9;

“the Regulator” means the Rail Regulator appointed by the Secretary of State under section 1 of the Railways Act 1993(8).

(2) Expressions used in these Regulations and in the Council Directives have the meanings given by the Council Directives, except that the definition of “railway infrastructure” shall be taken to include stations within the meaning of Part I of the Railways Act 1993.

(3) In these Regulations any reference to—

- (a) a numbered regulation, Part or schedule is a reference to the regulation, Part or schedule bearing that number in these Regulations;
- (b) a numbered paragraph is a reference to the paragraph bearing that number in the regulation or schedule in which the reference appears; and
- (c) a numbered rule is a reference to the rule in Schedule 1 bearing that number.

Scope

4.—(1) Subject to paragraph (2) these Regulations apply to—

- (a) the management of railway infrastructure and the allocation of railway infrastructure capacity in Great Britain;
- (b) the rail transport activities in Great Britain of and the charging of infrastructure fees to railway undertakings established or to be established in an EEA State and international groupings which they form; and
- (c) the licensing of such undertakings and groupings in respect of international services and international combined transport goods services which they operate.

(2) These Regulations do not apply to—

- (a) railway undertakings whose activities are limited to the operation of urban, suburban or regional services; and
- (b) the management of the tunnel system and the rail transport activity of the Concessionaires in respect of any shuttle service.

(7) Cm 2073 and Cm 2183.

(8) 1993 c. 43.

PART II

INFRASTRUCTURE MANAGEMENT

Separation of accounts between transport operations and infrastructure management and prohibition of transfer of state aid

5. Any railway undertaking which is also an infrastructure manager shall—
- (a) prepare and maintain accounts for business relating to the provision of transport services which are separate from its accounts for business relating to the management of railway infrastructure; and
 - (b) ensure that there is no transfer of state aid granted to the undertaking between the provision of transport services and the management of railway infrastructure.

Balancing infrastructure fees and infrastructure expenditure

6.—(1) An infrastructure manager shall ensure that, under normal business conditions over a reasonable period of time, the expenditure on railway infrastructure which he incurs does not exceed the income which he receives from infrastructure fees and State contributions.

(2) An infrastructure manager may finance the development of railway infrastructure, including the provision or renewal of capital assets, and may make a return on the capital employed in his undertaking.

Calculation of, and rules for the determination of, fees for the use of railway infrastructure

7.—(1) Infrastructure managers shall charge, and be paid, fees for the use by railway undertakings and international groupings of railway infrastructure for which they are responsible.

(2) Infrastructure fees shall be determined so as to avoid any discrimination in the charging for services of an equivalent nature in the same market.

(3) Infrastructure 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 a direction 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, 4 and 5 the references to an amount determined by agreement were references to an amount determined by the Regulator in consultation with those persons.

(4) 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.

Information to be provided by infrastructure managers

8.—(1) Whenever requested in writing to do so by the International Rail Regulator, an infrastructure manager shall provide him with such information concerning infrastructure fees charged by that infrastructure manager as the International Rail Regulator shall consider necessary to enable him to decide whether or not infrastructure fees are charged on a non-discriminatory basis.

(2) An infrastructure manager shall inform in good time railway undertakings using the railway infrastructure operated by that infrastructure manager in order to provide international services and international combined transport goods services of any major changes in the quality or capacity of the railway infrastructure concerned.

International Rail Regulator

9.—(1) There shall continue to be an officer known as the “International Rail Regulator” appointed by the Secretary of State to perform the functions conferred on him by these Regulations.

(2) The Secretary of State shall appoint a person to hold office as the International Rail Regulator.

(3) An appointment of a person to hold the office as the International Rail Regulator shall be for a term not exceeding five years, but previous appointment to that office shall not affect eligibility for re-appointment.

(4) The Secretary of State may remove a person from office as the International Rail Regulator on the ground of incapacity or misbehaviour.

(5) Subject to paragraphs (3) and (4), a person appointed as the International Rail Regulator shall hold and vacate office as such in accordance with the terms of his appointment.

(6) The provisions of Schedule 2 shall have effect with respect to the International Rail Regulator.

(7) At any time when there is no person holding office as the International Rail Regulator the functions conferred on the holder of that office by these Regulations shall be exercisable by the Secretary of State.

PART III

ACCESS AND TRANSIT MATTERS

Allocation bodies

10.—(1) The Secretary of State shall, after consulting the International Rail Regulator and such allocation bodies and infrastructure managers as appear to him to be appropriate, designate one or more infrastructure managers to be allocation bodies and specify the classes or descriptions of applications for access or transit rights in respect of which each such manager is to act as the allocation body.

(2) As soon as practicable after designating an allocation body pursuant to paragraph (1) the Secretary of State shall procure publication of a notice in the Official Journal of the European Communities containing the following particulars—

(a) the name of the allocation body and the address to which applications for the allocation of infrastructure capacity should be sent; and

(b) the classes or descriptions of applications for access or transit rights in respect of which the allocation body is to act as such.

(3) Any allocation body and any infrastructure manager shall ensure that such capacity is allocated on a fair and non-discriminatory basis.

(4) The Secretary of State may give directions to any allocation body or infrastructure manager for the purpose of ensuring that priority in the allocation of infrastructure capacity is given to rail services provided—

(a) pursuant to Council Regulation (EEC) No 1191/69 on public service obligations in transport⁽⁹⁾; or

(b) wholly or partly operated on infrastructure constructed or developed for specialised high speed or freight services.

(5) Where the Secretary of State has given a direction pursuant to paragraph (4)(a) which imposes a particular allocation of infrastructure capacity in the interests of public service, and which results in

(9) OJ No. L156, 28.6.69, p.1. Amended by Regulation (EEC) No. 1893/91 (OJ No. L169, 29.6.91, p. 1).

an infrastructure manager sustaining financial loss, he shall pay to that manager such compensation in respect of the loss as the Secretary of State thinks fair and reasonable in the circumstances of the case.

(6) The Secretary of State may give directions to any allocation body or infrastructure manager requiring the grant of access or transit rights to railway undertakings providing particular types of services or providing services in particular areas if in his opinion the grant of such rights is indispensable to secure the provision of adequate public services, the efficient use of railway infrastructure or the financing of new railway infrastructure.

(7) It shall be the duty of any person to whom the Secretary of State gives a direction pursuant to this regulation to comply with and give effect to the direction.

(8) Each allocation body and infrastructure manager shall in allocating infrastructure capacity have regard to any guidance issued by the International Rail Regulator after consultation with the Secretary of State.

Allocation of infrastructure capacity: application in Great Britain

11.—(1) Any international grouping may make an application—

(a) in the case of a grouping which includes a railway undertaking established in the United Kingdom, for such access and transit rights, or

(b) in the case of any other grouping, for such transit rights,

as may be necessary for the provision of international transport services between the EEA States where the undertakings constituting the grouping are established.

(2) Any railway undertaking established or to be established in an EEA State may make an application for the grant of such access and transit rights as may be necessary for the purpose of the operation of international combined transport goods services.

(3) Any agreement for the grant of access or transit rights to which paragraph (1) or (2) applies which is entered into otherwise than in pursuance of this Part shall be void.

(4) Any application referred to in paragraph (1) or (2) shall be in writing and shall be made to the allocation body designated pursuant to paragraph (1) of regulation 10 in respect of the class or description of application within which the application falls (“the GB allocation body”) whenever the departure point of the service in question is situated in Great Britain.

(5) On receipt by the GB allocation body of any such application, that body shall immediately send a copy of the application to any relevant infrastructure manager and to any relevant EEA allocation body.

(6) As soon as possible, but in any event no later than one month, after receiving all relevant information relating to such an application any relevant EEA allocation body and any relevant infrastructure manager shall decide whether to grant or to refuse the application and shall immediately inform the GB allocation body of its decision.

(7) As soon as possible, but in any event no later than two months, after receiving all relevant information relating to such an application the GB allocation body shall, together with each relevant EEA allocation body and each relevant infrastructure manager, decide whether the application should be granted or refused and shall inform the applicant of the decision.

(8) If an application is refused, the GB allocation body shall give to the applicant the reasons for such refusal.

(9) Where an application has been refused on the grounds of insufficient capacity, the GB allocation body, any relevant EEA allocation body and any relevant infrastructure manager shall if the applicant so requests reconsider the application on the next occasion that the timetables for the routes concerned are adjusted.

(10) The GB allocation body shall on request furnish interested parties with details of the dates of all relevant timetable adjustments and other administrative arrangements as they may reasonably require in connection with any request or proposed request under paragraph (9).

(11) The GB allocation body, any relevant EEA allocation body and any relevant infrastructure manager may require the payment of a charge to cover their reasonable costs of dealing with an application.

(12) Every international grouping and every railway undertaking to which railway infrastructure capacity is allocated in accordance with these Regulations shall conclude an agreement with each relevant infrastructure manager covering the necessary administrative, technical and financial matters to regulate traffic control and safety issues concerning the services to be provided by them.

(13) An agreement concluded pursuant to paragraph (12) shall include provision requiring the parties thereto to make such amendments thereto as the International Rail Regulator may direct in order to give effect to any decision he makes on a reference to him under regulation 14.

(14) The terms and conditions of an agreement concluded pursuant to paragraph (12) shall not be discriminatory between railway undertakings or between railway undertakings and the infrastructure manager as a provider of rail services.

(15) Within fourteen days of the conclusion of an agreement pursuant to paragraph (12) each relevant infrastructure manager shall send a copy thereof to the Regulator and the International Rail Regulator and shall notify the GB allocation body and each relevant EEA allocation body of the conclusion of the agreement.

(16) Within twenty one days of receiving a copy of such an agreement the International Rail Regulator shall procure publication of a notice in the Official Journal of the European Communities including the following particulars—

- (a) the name of the applicant railway undertaking or international grouping;
- (b) the name of the GB allocation body, each relevant infrastructure manager and relevant EEA allocation body;
- (c) brief particulars of the access or transit rights granted; and
- (d) a statement that any railway undertaking aggrieved by the decision of the GB allocation body as given effect by the agreement may by notice in writing refer the matter to the International Rail Regulator.

(17) The International Rail Regulator shall if so requested in writing by a railway undertaking which he reasonably considers has an interest in the matter provide to that undertaking such particulars of the agreement as that undertaking may reasonably require, including particulars as to the infrastructure fees payable under the agreement.

(18) In making information available pursuant to paragraph (17) the International Rail Regulator shall have regard to the need for excluding, so far as practicable, any particulars of or about the agreement which, if disclosed, would or might in the opinion of the International Rail Regulator seriously and prejudicially affect the interests of any party to the agreement.

(19) Any infrastructure manager which grants access or transit rights under this regulation shall so operate its control and safety systems as to take account of the services operated in exercise of such rights.

(20) Nothing in this regulation shall be taken to prevent an applicant from making direct contact with any relevant EEA allocation body but, if it does so, it shall so inform the GB allocation body.

(21) In this regulation and regulations 12, 13 and 14—

“EEA allocation body” means an allocation body in an EEA State other than the United Kingdom;

“GB allocation body” has the meaning given by paragraph (4);

“relevant EEA allocation body” means an EEA allocation body which is responsible for the allocation of capacity on railway infrastructure to which the application relates; and

“relevant infrastructure manager” means any infrastructure manager which manages infrastructure in Great Britain to which the application relates (including any allocation body which is also such an infrastructure manager).

Allocation of infrastructure capacity: application outside Great Britain

12.—(1) On receipt by a GB allocation body from an EEA allocation body of a copy of an application for access or transit rights made to the EEA allocation body, the GB allocation body shall immediately send a copy of the application to any relevant infrastructure manager.

(2) As soon as possible but in any event no later than three weeks after receiving all relevant information relating to the application, any such infrastructure manager shall decide whether to grant or to refuse the application in respect of the infrastructure which it manages and shall immediately after making the decision inform the GB allocation body thereof.

(3) As soon as possible but in any event no later than one week after being informed of the decision of each relevant infrastructure manager, the GB allocation body shall inform the EEA allocation body of each such decision.

(4) If an application for infrastructure capacity is refused, the GB allocation body shall give to the EEA allocation body the reasons for such refusal, and if such an application is granted the GB allocation body shall promptly notify the International Rail Regulator of that decision and provide him with the following particulars—

- (a) the name of the applicant, railway undertaking or international grouping;
- (b) the name of the GB allocation body, each relevant infrastructure manager and relevant EEA allocation body; and
- (c) brief particulars of the access or transit rights granted.

(5) Paragraphs (9) to (19) and (21) of regulation 11 shall have effect in relation to applications to which this regulation applies with the following modifications—

- (a) subject to sub-paragraph (c) references to any relevant EEA allocation body shall be disregarded;
- (b) in paragraph (9) the reference to the applicant shall be read as a reference to the EEA allocation body acting at the request of the applicant; and
- (c) in paragraph (15) the reference to each relevant EEA allocation body shall be read as a reference to the EEA allocation body.

Safety certificates

13.—(1) No railway undertaking or international grouping may exercise access or transit rights contained in an agreement with an infrastructure manager concluded pursuant to regulation 11 or 12 unless the undertaking or grouping has produced to the infrastructure manager a safety certificate.

(2) For the purposes of paragraph (1) a safety certificate is any document issued by the Health and Safety Executive confirming that—

- (a) (i) the railway undertaking or international grouping has prepared a safety case under regulation 4 of the Railways (Safety Case) Regulations 1994⁽¹⁰⁾ in respect of the operation of trains under the agreement;
- (ii) the safety case has been accepted by the relevant infrastructure controller (as defined in the said regulation 4); and

⁽¹⁰⁾ S.I. 1994/237.

- (iii) the Health and Safety Executive is satisfied with the safety case; or
- (b) the railway undertaking or international grouping is exempt from the said regulation 4 when it operates trains under the agreement.

Appeals in respect of allocation of infrastructure capacity or the charging of fees

14.—(1) A railway undertaking aggrieved by a decision of the GB allocation body under regulation 11 or 12 for the allocation of railway infrastructure capacity or the charging of infrastructure fees may refer the matter to the International Rail Regulator.

(2) In the case of a decision to refuse an application, such notice shall be given by the applicant within twenty one days of being informed of the decision.

(3) In the case of a decision to grant an application, such notice shall be given within two months of the publication of the particulars of any agreement made pursuant to the decision in the Official Journal of the European Communities in accordance with paragraph (16) of regulation 11 (including that paragraph as applied by paragraph (5) of regulation 12).

(4) Any railway undertaking which refers a decision to the International Rail Regulator under paragraph (1) shall at the same time provide a statement of the reasons why it is aggrieved by the decision.

(5) The International Rail Regulator shall, within seven days of receiving such a notice and a statement of reasons, send a copy thereof to the Regulator, the GB allocation body, any relevant EEA allocation body, the relevant infrastructure manager and the international grouping or railway undertaking concerned.

(6) Any person notified under paragraph (5) may, within twenty one days of receiving such a copy, make such representations as he considers appropriate to the International Rail Regulator concerning the decision to which the notice relates and the statement of reasons.

(7) The International Rail Regulator shall reach a determination on a reference made under this regulation within two months of the date of receiving all relevant information (including any information provided pursuant to paragraph (12)) to enable him to determine the reference.

(8) On disposing of a reference under this regulation the International Rail Regulator may decide that the GB allocation body's decision should stand, be reversed or be modified.

(9) Where the decision of the International Rail Regulator requires the modification of any agreement made pursuant to an allocation body's decision or the grant of rights where an application has been refused he may give such directions as he thinks fit for that purpose and the infrastructure manager and railway undertaking concerned shall be under a duty to comply with and give effect to any such directions.

(10) The International Rail Regulator shall not make a decision requiring the grant of rights by an infrastructure manager or the modification of rights granted by an infrastructure manager unless he is satisfied that the grant would not involve the breach by the infrastructure manager of the duty imposed on him by paragraph (3) of regulation 10 or of any direction given by the Secretary of State pursuant to paragraph (4) of that regulation.

(11) If on a reference to the International Rail Regulator under the preceding provisions of this regulation a question arises as to any matter which may, in the opinion of the International Rail Regulator, have safety implications, he shall refer the question to the Health and Safety Executive whose opinion on the question shall be taken into account by the International Rail Regulator.

(12) It shall be the duty of any railway undertaking, any infrastructure manager and any GB allocation body to provide the International Rail Regulator with such information as he may reasonably require for the purpose of determining a reference to him under this regulation.

PART IV

INTERNATIONAL LICENCES

Prohibition of unlicensed provision of international services

15.—(1) Subject to paragraph (4) no person may provide international services in Great Britain or international combined transport goods services in Great Britain unless he is authorised to do so by an international licence, and any person who provides such services without such a licence shall be guilty of an offence.

(2) Any person who is guilty of an offence under this regulation shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(3) No proceedings shall be instituted in England and Wales in respect of an offence under this regulation except by or on behalf of the Secretary of State or the International Rail Regulator.

(4) This regulation does not apply to the provision of services to which paragraph (1) applies prior to 28th September 1998 if and to the extent that the operation of railway assets for the purposes of such provision is authorised by a licence granted under Part I of the Railways Act 1993 which was granted before 27th June 1998, but any such licence shall to that extent be revoked on 28th September 1998.

(5) In this regulation the expression “international licence” includes a licence granted pursuant to any action taken by an EEA State for the purpose of implementing Council Directive No. [95/18/EC](#).

Appointment of licensing authority and grant of international licences

16.—(1) The International Rail Regulator is hereby designated as the person responsible for granting international licences.

(2) Subject to and in accordance with these Regulations, the International Rail Regulator shall, on an application in writing made to him by a railway undertaking established in Great Britain in such form and manner as he may from time to time prescribe, grant to that railway undertaking an international licence.

(3) An international licence may authorise the provision of services generally or be restricted to particular types of service specified in the licence.

(4) Before granting or modifying an international licence the International Rail Regulator shall consult the Health and Safety Executive.

(5) An applicant shall submit with his application such application fee as the International Rail Regulator may reasonably require and the information about the applicant referred to in Schedule 3 and at any time after submitting the application such further information as the International Rail Regulator may reasonably require in connection with the application.

(6) The applicant shall at the same time as he submits any information about his professional competence to the International Rail Regulator send to the Health and Safety Executive a copy of that information.

(7) The International Rail Regulator shall grant an international licence if, and only if, he is satisfied that the applicant will be able at any time to satisfy the requirements referred to in Schedule 3 as to good repute, financial fitness, professional competence and cover for liabilities to third parties.

(8) An application for an international licence shall be determined by the International Rail Regulator as soon as possible and in any event within three months of receipt of the information referred to in paragraph (5).

(9) In respect of each application for an international licence the International Rail Regulator shall publish at least once in the Official Journal of the European Communities, the London Gazette, the Edinburgh Gazette and in one or more newspapers whose circulation together covers the whole of Great Britain a notice including the following particulars:—

- (a) a statement that the applicant has made an application for an international licence and the principal address of the International Rail Regulation;
- (b) the name of the applicant and the address of its registered or principal office; and
- (c) a summary of the activities which the applicant wishes to carry out pursuant to the international licence

(10) The International Rail Regulator shall inform the applicant in writing of his decision and, where he refuses to grant an international licence, the refusal shall state the reasons for his decision.

(11) As soon as practicable after granting an international licence the International Rail Regulator shall send a copy of the licence to the Regulator and to the Health and Safety Executive.

(12) Any sums received by the International Rail Regulator under this regulation shall be paid into the Consolidated Fund.

(13) Schedule 3 shall have effect.

Modification of international licences

17.—(1) The International Rail Regulator may modify an international licence if the holder of the licence consents to the modification.

(2) Before modifying an international licence the International Rail Regulator shall consult the Health and Safety Executive.

(3) As soon as practicable after modifying an international licence the International Rail Regulator shall send a copy to the Regulator and to the Health and Safety Executive.

Validity of international licences

18. An international licence shall, unless previously revoked or surrendered in accordance with any provision in these Regulations or the licence, continue in force for as long as the railway undertaking concerned complies with the requirements of these Regulations and any conditions included in the licence.

Monitoring, suspension and revocation of international licences

19.—(1) If at any time the International Rail Regulator considers that there is serious doubt whether a railway undertaking to which an international licence has been granted complies with a requirement of these Regulations or a condition included in the licence, he may take such steps as are necessary to enable him to determine whether or not the undertaking does so comply.

(2) Where the serious doubt of the International Rail Regulator relates wholly or partly to the requirement of professional competence such steps shall include consulting the Health and Safety Executive.

(3) If, having taken the steps referred to in paragraph (1), the International Rail Regulator is satisfied that a railway undertaking to which an international licence has been granted does not comply with any such requirement, he shall revoke the licence or suspend it for such period as he thinks fit.

(4) The International Rail Regulator shall revoke an international licence if proceedings have been commenced for the winding up of a railway undertaking to which an international licence has been granted on the grounds that the undertaking is unable to pay its debts and he is satisfied that

there is no reasonable prospect of satisfactory financial restructuring of the undertaking within a reasonable period of time.

(5) Where the International Rail Regulator is satisfied that there is serious doubt whether a railway undertaking to which an international licence has been granted by a licensing authority other than himself complies with any requirement of Council Directive No. 95/18/EC he shall without delay so notify that licensing authority.

(6) Where the International Rail Regulator has suspended or revoked an international licence solely on the grounds of the non-compliance by the railway undertaking with the requirements of financial fitness specified in Schedule 3, but he considers that there is a realistic prospect of a satisfactory financial restructuring of the undertaking taking place within a reasonable period of time, he may grant to the undertaking a temporary international licence pending such financial restructuring.

(7) A temporary international licence granted under paragraph (6) shall not be granted where the International Rail Regulator after consultation with the Health and Safety Executive considers that safety would be jeopardised.

(8) A temporary international licence granted under paragraph (6) shall not be granted for a period exceeding six months.

(9) Where a railway undertaking to which an international licence has been granted has either ceased the operations to which the licence relates or has not commenced such operations within six months of the date of such grant then the International Rail Regulator may either require the railway undertaking to resubmit its licence to him for approval or suspend the licence.

(10) Where the International Rail Regulator has required a railway undertaking to resubmit its international licence in pursuance of paragraph (9) on the grounds that the railway undertaking has not commenced such operations the railway undertaking shall be entitled to request that a period longer than the six months be granted in which it can commence operations. In considering such a request the International Rail Regulator shall take account of the specific nature of the services to be provided by the railway undertaking under the international licence.

(11) In the event of a change to a railway undertaking's legal situation, in particular following a change in the control or ownership of the railway undertaking as a result of a merger with or take-over by another undertaking, the International Rail Regulator may require the railway undertaking to resubmit its licence to him for review. The railway undertaking may continue operations while its licence is under review unless the International Rail Regulator is satisfied after consultation with the Health and Safety Executive that safety is jeopardised by the change and so notifies the undertaking.

(12) When a railway undertaking intends significantly to change or extend its activities from those in respect of which a licence was granted to it, the railway undertaking shall resubmit its licence to the International Rail Regulator for review.

(13) When the International Rail Regulator suspends, revokes or amends an international licence in accordance with this regulation he shall forthwith inform the Commission of such amendment, revocation or suspension.

Conditions of international licences

20.—(1) An international licence shall include conditions requiring the licence holder to satisfy requirements as to the good repute, financial fitness, professional competence and cover for liabilities to third parties of the licence holder, including those requirements specified in Schedule 3, and may include conditions—

- (a) requiring the licence holder to submit to a review of its licence at least every five years during the currency of the licence;
- (b) concerning the suspension or revocation of the licence.

(2) Without prejudice to the generality of paragraph (1) licence conditions may require the licence holder to make a payment to the International Rail Regulator on the grant of the licence and to make such further payments during the currency of the licence, the amount or amounts to be determined by the International Rail Regulator.

(3) Any sums received by the International Rail Regulator under paragraph (2) shall be paid into the Consolidated Fund.

PART V

MISCELLANEOUS

Amendment of Railways Act 1993

21.—(1) The Railways Act 1993 shall be amended in accordance with the following provisions of this regulation.

(2) After subsection (1) insert—

“(1A) This section does not apply to a person who acts as the operator of a railway asset to the extent that the asset is operated for the purpose of providing international services”.

(3) In subsection (2) of that section, before the definition of “operator”, insert the following definitions—

““international licence” means a licence granted pursuant to a provision contained in subordinate legislation made for the purpose of implementing the Directive of the Council of the European Union dated 19th June 1995 on the licensing of railway undertakings or pursuant to any action taken by an EEA State for that purpose;” and

““international services” means services the provision of which requires an international licence;”.

(4) After subsection (2) of section 6 there shall be inserted the following subsection—

“(2A) In subsection (2) above “EEA State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;”.

(5) In subsection (1) of section 17 delete the word “or” after paragraph (b) and after paragraph (c) insert “or” followed by—

“(d) the permission to use a railway facility to which the application relates could be applied for under subordinate legislation made for the purpose of implementing Council Directive [95/19/EC](#) on the allocation of railway infrastructure capacity and the charging of infrastructure fees.”.

(6) In subsection (7) of section 17 for the definition of “the Directive” substitute the following definition—

““the Directives” mean Council Directive No. [91/440/EEC](#) on the development of the Community’s railways and Council Directive No. [95/19/EC](#) on the allocation of railway infrastructure capacity and the charging of infrastructure fees;”.

(7) In that subsection, in the definition of “implementing regulation” substitute “the Directives” for “the Directive” in both places.

(8) In that subsection, in the definition of “international railway access contract”—

(a) substitute “the Directives” for “the Directive” in both places;

(b) substitute “allocation body” for “infrastructure manager” in both places; and

(c) delete “other than the United Kingdom”.

(9) In subsection (1) of section 83, after the definition of “installation owner”, insert—

““international licence” has the meaning given by section 6(2) above;”.

(10) In subsection (2) of section 145, at the end of paragraph (g) insert—

“or Council Directive [95/18/EC](#) on the licensing of railway undertakings or Council Directive [95/19/EC](#) on the allocation of railway infrastructure capacity and the charging of infrastructure fees”.

Statutory authority to run trains

22. Any international grouping or railway undertaking granted access or transit rights under these Regulations shall, if and to the extent that it would not, apart from this regulation, have statutory authority to run trains over any track in exercise of such rights, be taken to have statutory authority to do so.

International groupings and railway undertakings granted access or transit rights not to be common carriers

23. International groupings and railway undertakings granted access or transit rights under these Regulations shall not in relation to the provision of international services in exercise of those rights be regarded as common carriers by railway.

Application of enactments concerning railways

24. Paragraphs 2 (disapplication of enactments in the case of Concessionaires and through service operators), 3 (extension of enactments in relation to through service operators) and 4 (modification of enactments applying to Concessionaires and through service operators) of Schedule 6 to the Channel Tunnel Act 1987 shall apply to international groupings and railway undertakings, other than the Concessionaires and the British Railways Board, in relation to the provision of international services in exercise of access or transit rights under these Regulations who are not through service operators within the meaning of that Schedule as they apply to those who are.

International groupings

25. In the event of a contravention of, or a refusal or failure to comply with, a requirement or prohibition imposed by these Regulations on an international grouping—

- (a) where the contravention, or refusal or failure to comply would be an offence under these Regulations or under the Health and Safety at Work, etc. Act 1974⁽¹¹⁾ each railway undertaking comprised in the grouping shall be guilty of the offence and liable to be proceeded against and punished accordingly; and
- (b) where a civil remedy would be available to any person in respect of any loss, damage or injury caused by the contravention, or refusal or failure to comply, each railway undertaking comprised in the grouping shall be jointly and severally liable in respect of such loss, damage or injury.

Civil proceedings

26.—(1) The obligation to comply with regulation 5, paragraph (1) of regulation 6, paragraph (2) of regulation 7, paragraph (2) of regulation 8, paragraph (3) of regulation 10, or paragraphs (12) and (14) of regulation 11 (including those paragraphs as applied by paragraph (5) of regulation 12), a decision under paragraph (8) or direction under paragraph (9) of regulation 14, or the rules specified

(11) [1974 c. 37](#).

in Schedule 1 shall be a duty owed to any person who may be affected by a breach of that duty and shall be actionable by any such person who sustains loss, damage or injury caused by the breach at the suit or instance of that person.

(2) In any proceedings brought against an allocation body, infrastructure manager, international grouping or railway undertaking in pursuance of paragraph (1), it shall be defence for it to prove that it took all reasonable steps and exercised all due diligence to avoid the breach of duty.

(3) Without prejudice to the right which any person may have by virtue of paragraph (1) to bring civil proceedings in respect of any breach of duty, the obligation to comply shall be enforceable by civil proceedings by the International Rail Regulator for an injunction or for interdict or any other relief.

Making of false statements etc.

27.—(1) If any person, in giving any information or making any application under or for the purposes of any provision of these Regulations, makes any statement which he knows to be false in a material particular, he is guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(2) No proceedings shall be instituted in England or Wales in respect of an offence under this regulation except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

Offences by bodies corporate and Scottish partnerships

28.—(1) Where an offence under these Regulations has been committed by a body corporate and it is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where a Scottish partnership is guilty of an offence under these Regulations in Scotland and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Restrictions on disclosure of information

29. Section 145 of the Railways Act 1993 shall have effect in relation to information which has been obtained under or by virtue of any provision of these Regulations and which relates to the affairs of any individual or to any particular business as it has effect in relation to such information obtained under or by virtue of any of the provisions of that Act.

Offences outside the United Kingdom

30.—(1) For the purpose of determining whether a breach of the duty imposed by regulation 5 has occurred, it is immaterial that the relevant acts or omissions occurred outside the United Kingdom if, when they occurred, the person—

- (a) was a United Kingdom national, or

- (b) was a body incorporated under the law of any part of the United Kingdom, or
 - (c) was a person (other than a United Kingdom national or such a body) maintaining a place of business in the United Kingdom.
- (2) In this regulation “United Kingdom national” means an individual who is—
- (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(12) is a British subject, or
 - (c) a British protected person (within the meaning of that Act).

Signed by authority of the Secretary of State for the Environment, Transport and the Regions

Glenda Jackson
Parliamentary Under Secretary of State,
Department of the Environment, Transport and
the Regions

30th May 1998