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STATUTORY INSTRUMENTS

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**2005 No. 3049**

**The Railways Infrastructure (Access and Management) Regulations 2005**

**PART 1**

**PRELIMINARY**

**Interpretation**

**3.—(1)** In these Regulations—

“access and transit rights” means rights of access to railway infrastructure and rights of transit through a Member State using the railway infrastructure;

“the Act” means the Railways Act 1993(1);

“access charges review” means a review of access charges carried out in accordance with Schedule 4A to the Act(2);

“the 1996 Act” means the Channel Tunnel Rail Link Act 1996(3);

“*ad hoc* request” means a request for individual train paths made other than in accordance with the timetable for the capacity allocation process as set out in Schedule 4;

“allocation body” means a body or undertaking, other than the infrastructure manager, which is responsible, by virtue of regulation 16(3), for the functions and obligations of the infrastructure manager under Part 5 and Schedule 4;

“applicant” means—

- (a) a railway undertaking licensed in accordance with the provisions of Council Directive 95/18/EC dated 19th June 1995 on the licensing of railway undertakings (4), as amended by Directive 2001/13/EC dated 26th February 2001(5) and Directive 2004/49/EC dated 29th April 2004(6), both of the European Parliament and of the Council;
- (b) an international grouping of railway undertakings; or
- (c) a body or undertaking with public service or commercial interest in procuring infrastructure capacity, such as public authorities under Regulation (EEC) No. 1191/69(7) and shippers, freight forwarders, and combined transport operators;

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(1) 1993 c. 43.

(2) Schedule 4A is amended by Schedule 4 to the Railways Act 2005 (c. 14) on a date to be appointed.

(3) 1996 c. 61.

(4) O.J. No L143, 27.6.1995, p70. 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 (O.J. No. L57, 7.3.96, p.37).

(5) O.J. No L75, 15.3.2001, p26. Added to Annex XIII of the EEA Agreement by Article 2 of the Decision of the EEA Joint Committee No. 118/2001 of 28th September 2001 (O.J. No. L322, 6.12.2001, p32).

(6) O.J. No. L164, 30.04.04, p58. Added to Annex XIII of the EEA Agreement by Article 1 of the Decision of the EEA Joint Committee No. 151/2004 of 29th October 2004 (O.J. No. L102, 21.4.2005, p27).

(7) Regulation (EEC) No. 1191/69 of the Council of 26th June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (O.J. L156, 28.6.1969, p1). Regulation as last amended by Regulation (EC) No. 1893 (O.J. No. L169, 29.6.1991, p1).

“charging body” means a body or undertaking, other than the infrastructure manager, which is responsible, by virtue of regulation 12(7), for the functions and obligations of the infrastructure manager under Part 4 and Schedule 3;

“charging scheme” means the specific charging rules established in accordance with regulation 12 by the Office of Rail Regulation or, as the case may be, the infrastructure manager;

“charging system” means the system established by an infrastructure manager to determine access charges;

“the Concessionaires”, “the tunnel system” and “shuttle service” have the same meanings as in the Channel Tunnel Act 1987(8);

“the Council Directives” means—

- (a) Council Directive No 91/440/EEC dated 29th July 1991 on the development of the Community’s railways(9), as amended by Directive 2001/12/EC dated 26th February 2001(10) and Directive 2004/51/EC(11) dated 29th April 2004, both of the European Parliament and of the Council; and
- (b) Directive No 2001/14 dated 26th February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure(12), as amended by Directive 2004/49/EC dated 29th April 2004 on safety on the Community’s railways, both of the European Parliament and of the Council;

“development agreement” and “rail link facility” have the same meanings as in the 1996 Act(13), except that the definition of “rail link facility” shall also include any rail maintenance depot which provides maintenance services primarily for rail vehicles providing services on the rail link, as defined in section 56 of that Act, and to which the rail access is via that rail link;

“EEA state” means a Member State, Norway, Iceland or Liechtenstein;

“electrical plant” has the same meaning as in the Electricity Act 1989(14);

“factory” has the same meaning as in the Factories Act 1961(15);

“framework agreement” means either—

- (a) an access contract described in section 18(2)(a) of the Act which satisfies one of the conditions in sub-section (1) of that section; or
- (b) a legally binding agreement made other than in pursuance of sections 17 or 18 of the Act setting out the rights and obligations of an applicant and the infrastructure manager or, as the case may be, allocation body in relation to the infrastructure capacity to be allocated and the charges to be levied over a period in excess of one working timetable period;

“infrastructure manager” means any body or undertaking that is responsible in particular for—

- (a) the establishment and maintenance of railway infrastructure; and
- (b) the provision with respect to that infrastructure of network services as defined in section 82 of the Act,

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(8) 1987 c. 53. see section 49.

(9) O.J. L237, 24.8.91, p25: the text of the Directive is subject to the amendments in a corrigendum published in O.J. No. L305, 6.11.91, p22.

(10) O.J. No L75. 15.03.01, p1. Added to Annex XIII of the EEA Agreement by Article 1 of the Decision of the EEA Joint Committee No. 118/2001 of 28th September 2001 (O.J. No. L322, 6.12.2001, p32).

(11) O.J. L164, 30.4.04, p16. Added to Annex XIII of the EEA Agreement by Article 1 of the Decision of the EEA Joint Committee No. 151/2004 of 29th October 2004 (O.J. No. L102, 21.4.2005, p27).

(12) O.J. No. L75, 15.3.01, p29. Added to Annex XIII of the EEA Agreement by Article 3 of the Decision of the EEA Joint Committee No. 118/2001 of 28th September 2001 (O.J. No. L322, 6.12.2001, p32).

(13) see sections 56 and 17 respectively.

(14) 1989 c. 29. See section 64, to which amendments have been made which are not relevant to this instrument.

(15) 1961 c. 34. See section 175, amended by S.I.1983/978, regulations 3(1) and Schedule 1.

but, notwithstanding that some or all of the functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings, the obligations in respect of those functions remain with the infrastructure manager except where the functions and obligations pass to an allocation or charging body by virtue of regulations 16(3) and 12(7) respectively;

“military establishment” means an establishment intended for use for naval, military or air force purposes or for the purposes of the Department of the Secretary of State responsible for defence;

“mine” has the same meaning as in the Mines and Quarries Act 1954(16);

“nuclear site” has the same meaning as in the Radioactive Substances Act 1993(17);

“quarry” has the same meaning as in the Quarries Regulations 1999(18);

“the Office of Rail Regulation” means the body established under section 15 of the Railways and Transport Safety Act 2003(19);

“railway infrastructure” consists of the items described as “network”, “station” and “track”, in section 83 of the Act, but excludes such items—

- (a) which consist of, or are situated on, branch lines and sidings whose main operation is not directly connected to the provision of train paths;
- (b) within a maintenance or goods depot, or a marshalling yard;
- (c) within a railway terminal, port, factory, mine, quarry, nuclear site or site housing electrical plant;
- (d) which consist of, or are situated on, networks reserved mainly for local, historical or touristic use; and
- (e) within a military establishment;

“service provider” means a body or undertaking that supplies any of the services—

- (a) to which access is granted by virtue of regulations 6 or 7; or
- (b) listed in paragraphs 2, 3 or 4 of Schedule 2,

whether or not that body or undertaking is also an infrastructure manager;

“transit rights” means rights of transit through a Member State using railway infrastructure located in that Member State;

“the Treaty” means the consolidated versions of the Treaty on European Union and of the Treaty establishing the European Community(20);

“working day” means any day which is not a Saturday, Sunday, Good Friday, Christmas Day or a bank holiday in England and Wales by virtue of section 1 of the Banking and Financial Dealings Act 1971(21); and

“working timetable period” means the calendar year commencing at midnight on the second Saturday in December.

(2) Except where a definition in paragraph (1) applies, expressions used in these Regulations and in the Council Directives shall have the same meaning as in the Council Directives.

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(16) 1954 c. 70; see section 180, amended by S.I. 1974/2013, regulation 2(1)(b) and Schedule 2, paragraph 3; S.I. 1993/1897, regulation 41(2) and Schedule 3, Part II; S.I. 1999/2024, regulation 47(1) and Schedule 2, Parts 1 and Part II.

(17) 1993 c. 12. See section 47, to which amendments have been made which are not relevant to this instrument.

(18) S.I. 1999/2024, see regulation 3.

(19) 2003 c. 20.

(20) 2002/C325/01.

(21) 1971 c. 80.

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**Status:** *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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