

**2009 No. 1122**

**TRANSPORT**

**RAILWAYS**

**The Railways Infrastructure (Access and Management)  
(Amendment) Regulations 2009**

*Made* - - - - - *30th April 2009*

*Laid before Parliament* *5th May 2009*

*Coming into force in accordance with regulation 1(1)*

The Secretary of State being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to railways and railway transport, in exercise of the powers conferred by that section and paragraph 1A of Schedule 2 to that Act makes the following Regulations.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for any reference to Regulation (EC) No 1370/2007 of the European Parliament and of the Council (c) to be construed as a reference to that Regulation as amended from time to time.

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Railways Infrastructure (Access and Management) (Amendment) Regulations 2009 and come into force –

- (a) for the purposes of regulation 2(2)(d) and (e), (6), (7)(a) to (e), (9), (10), (14) and (15) and regulation 3 on 3<sup>rd</sup> June 2009;
- (b) for the purposes of regulation 2(5), (7)(f), and (8) on 1<sup>st</sup> October 2009; and
- (c) for all other purposes on 1<sup>st</sup> January 2010.

(2) These Regulations do not extend to Northern Ireland.

**Amendment of the Railways Infrastructure (Access and Management) Regulations 2005**

2.—(1) The Railways Infrastructure (Access and Management) Regulations 2005(d) are amended as follows.

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(a) S.I. 1996/266, to which there are amendments not relevant to these Regulations.  
(b) 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a) and the European Union (Amendment) Act 2008 (c.7), section 3(3), Schedule, Part 1. The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) of the 1972 Act by section 1 of the European Economic Area Act 1993 (c.51).  
(c) O.J. L315, 3.12.07, p1. Those Regulations enter into force on 3 December 2009.  
(d) S.I. 2005/3049.

- (2) In regulation 3(1) (interpretation)—
- (a) for the definition of “access and transit rights” substitute—  
“access rights” means rights of access to railway infrastructure for the purpose of operating a service for the transport of goods or passengers;”;
  - (b) in the definition of “applicant”—
    - (i) at the end of sub-paragraph (a), insert “or”;
    - (ii) omit sub-paragraph (b);
    - (iii) omit the words “, such as public authorities under Regulation (EEC) No 1191/69 and shippers, freight forwarders, and combined transport operators” from sub-paragraph (c);
  - (c) after the definition of “charging system” insert—  
““competent authority” has the same meaning as in Article 2 of Regulation (EC) No 1370/2007, as amended from time to time;”;
  - (d) in the definition of “the Council Directives”—
    - (i) for the words after “February 2001” in sub-paragraph (a) to the end of that sub-paragraph, substitute—  
“, Directive 2004/51/EC (a) dated 29th April 2004 and Directive 2007/58/EC (b) dated 23rd October 2007, all of the European Parliament and of the Council; and”;
    - (ii) for the words after “29<sup>th</sup> April 2004” in sub-paragraph (b) to the end of that sub-paragraph, substitute—  
“and Directive 2007/58/EC dated 23rd October 2007, all of the European Parliament and of the Council;”;
  - (e) after the definition of “nuclear site” insert—  
““public passenger transport” has the same meaning as in Article 2 of Regulation (EC) No 1370/2007 (c), 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;”;
  - (f) after the definition of “railway infrastructure” insert—  
“Regulation (EC) No 1370/2007” means Regulation (EC) No 1370/2007 of the European Parliament and of 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 Office of Rail Regulation 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 service notified to the Office of Rail Regulation under regulation 16(4A);”;
  - (g) omit the definition of “transit rights”.
- (3) For regulation 5 (access and transit rights) substitute—

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(a) O.J. L164, 30.4.04, p164.  
(b) O.J. L315 03.12.07, p44.  
(c) O.J. L315, 3.12.07, p1.

## “Access rights

5.—(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 include the right to pick up passengers at any station located on the international route 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 29A.

(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 29, if a railway undertaking is denied the entitlements conferred on it by this regulation other than pursuant to a decision of the Office of Rail Regulation under regulation 29A, that railway undertaking has a right of appeal to the Office of Rail Regulation in accordance with regulation 29.”.

(4) In regulation 6 (access to terminals and ports)—

- (a) in paragraphs (1) and (4) for “an international grouping or” substitute “a”;
- (b) in paragraph (2) omit “international groupings and”; and
- (c) in paragraph (4) omit “international grouping or” in the second place that it appears.

(5) For regulation 13(3) (infrastructure costs) substitute—

“(3) The Office of Rail Regulation must—

- (a) in the case of a rail link facility, exercise its rights and responsibilities under or by virtue of the relevant development agreement; and
- (b) in any other case, exercise its functions under the Act

in order to ensure that the requirements set out in paragraph (2) are complied with.”.

(6) In regulation 16 (capacity allocation), insert after paragraph (4)—

“(4A) An applicant applying for infrastructure capacity with a view to operating an international passenger service must give notice of that fact to the infrastructure manager concerned and to the Office of Rail Regulation and provide them with such information as the Office of Rail Regulation may reasonably require or prescribe.

(4B) When the Office of Rail Regulation 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, any railway undertaking which is a relevant public service operator and any other competent authority with a right to limit access along the route of the international passenger service notified under paragraph (4A) with a copy of the information in relation to that service provided to it in accordance with that paragraph.”.

(7) In regulation 18 (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),”; and

- (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 22(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 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 paragraph (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 paragraph (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.”; and
- (f) for paragraph (12) substitute—
  - “(12) Before entering into a framework agreement in relation to a rail link facility, and before amending any such agreement, the infrastructure manager and the applicant must obtain the approval of the Office of Rail Regulation.
  - (13) Nothing in these Regulations has the effect of applying any of sections 17 to 22C of the Act to a rail link facility.”.
- (8) In regulation 28 (regulatory body), omit—
  - (a) in paragraph (2) “or, in the case of a rail link facility, the Secretary of State,”;
  - (b) in paragraph (3) “Subject to paragraph (4),”; and
  - (c) paragraph (4).
- (9) After regulation 29 (appeals to the regulatory body), insert—

**“Regulatory decisions concerning international passenger services**

**29A.**—(1) The Office of Rail Regulation must at the request of a relevant competent authorities or an interested railway undertaking or other party, or may on its own initiative, determine whether a service for the transport of passengers by train is an international passenger service.

(2) The Office of Rail Regulation-

- (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 5 by an applicant for infrastructure capacity notified under regulation 16(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 paragraph (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 16(4A), any railway undertaking which is a relevant public service operator and the infrastructure manager concerned.

(4) Subject to paragraph (7), the Office of Rail Regulation must, within two months of the date of receipt of all relevant information (including information provided pursuant to regulation 31) and having consulted the relevant parties, as appropriate —

- (a) make a decision on a request made or following a decision to consider on its own initiative under paragraph (2);
- (b) 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 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 concerned and any railway undertaking seeking access rights to infrastructure for the purpose of operating an international passenger service may request a reconsideration of the decision or direction or both.

(5) Where the Office of Rail Regulation 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) Subject to paragraph (7), where the Office of Rail Regulation has received a properly made request for a reconsideration of its decision or direction under paragraph (2) in accordance with paragraph (4)(d), it must, within two months of the date of receipt of all relevant information (including information provided pursuant to regulation 31) —

- (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) Where a decision or direction under paragraphs (4) or (6) would affect a rail link facility or, as the case may be, the operation of the development agreement, the Office of Rail Regulation must consult and, subject to paragraph (8), take into account any representations made by, the Secretary of State before making or issuing such a decision or direction.

(8) Where paragraph (7) applies and, following consultation, the Secretary of State submits representations, the Office of Rail Regulation must, before making or issuing a decision or direction, or reconsidered decision or direction, consult such interested parties as it considers appropriate on the representations submitted by the Secretary of State.

(9) 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 Office of Rail Regulation 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 that Office.

(10) Without prejudice to the right of any person to make an application to the court under Part 54 of the Civil Procedure Rules 1998—

- (a) a decision by the Office of Rail Regulation 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.”;
- (10) In regulation 31(provision of information to the regulatory body)—
- (a) for “29 or 30” substitute “13, 29, 29A or 30”; and
- (b) in sub-paragraph (a)(iii)—
- (i) for “and Directive 2004/51/EC dated 29 April 2004, both” substitute—  
“Directive 2004/51/EC dated 29 April 2004 and Directive 2007/58/EC dated 23 October 2007, all”; and
- (ii) for “on safety on the Community’s railways, both” substitute—  
“and Directive 2007/58/EC dated 23 October 2007, all”.
- (11) In regulation 33 (statutory authority to run trains), for “transit, or access and transit” substitute “access”.
- (12) In regulation 34 (application of enactments concerning railways), omit—
- (a) between the words “apply to” and “railway” “international groupings and”; and
- (b) between the words “access” and “rights” “or transit”.
- (13) Regulation 35 (international groupings) is repealed.
- (14) In regulation 36 (civil proceedings) -
- (a) in paragraph (1)-
- (i) after sub-paragraph (d) omit “or”;
- (ii) after sub-paragraph (e), insert—  
“or;
- (f) paragraph (10) of regulation 29A,”; and
- (b) in paragraph (2), omit “international grouping, ”.
- (15) In Schedule 3 (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(4)”;
- (ii) in sub-paragraph (3), between “services, or” and “encouraging the” insert “discounts” .

### **Consequential amendments**

3. The Schedule (consequential amendments) has effect.

Signed by authority of the Secretary of State for Transport

30th April 2009

*Andrew Adonis*  
Minister of State  
Department for Transport

## Consequential amendments

**The Railways Act 1993**

- 1.—(1) The Railways Act 1993(a) is amended as follows.
- (2) In section 145 (general restrictions on disclosure of information)—
- (a) in subsection (2)(gb)(b)—
- (i) for “and Directive 2004/51/EC dated 29 April 2004, both” substitute “, Directive 2004/51/EC dated 29 April 2004 and Directive 2007/58/EC dated 23 October 2007, all”; and
- (ii) for “on safety on the Community’s railways, both” substitute “and Directive 2007/58/EC dated 23 October 2007, all”.

**The Greater London Authority Act 1999**

- 2.—(1) The Greater London Authority Act 1999(c) is amended as follows.
- (2) In section 235(d) (restrictions on the disclosure of information) –
- (a) in subsection (2)(b)(i) for “and Directive 2004/51/EC dated 29 April 2004, both” substitute “, Directive 2004/51/EC dated 29 April 2004 and Directive 2007/58/EC dated 23 October 2007, all”; and
- (b) in subsection (2)(b)(ii) for the words after “29 April 2004” to the end of paragraph (b) substitute “and Directive 2007/58/EC dated 23 October 2007, all of the European Parliament and of the Council;”.

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(a) 1993 c.43.

(b) Section 145(2)(gb) was inserted by S.I. 2005/3049, regulation 2(4), Schedule 1, Part 1, paragraph 4(e)(ii).

(c) 1999 c. 29.

(d) In section 235(2)(b) the words from “or the Railways Act 2005” to the end of paragraph (b) were substituted for the previous words by S.I. 2005/3049, Regulation 2(4), Schedule 1, Part 1, paragraph 5(a).

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement the provisions of European Parliament and Council Directive 2007/58/EC (OJ No. L315, 3.12.07, p44) of 23<sup>rd</sup> October 2007 amending Council Directive 91/440/EC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure. In addition, they amend regulations 13 and 28 of the Railways Infrastructure (Access and Management) Regulations 2005 (SI 2005/3029) ("the 2005 Regulations") (*regulation 2(5) and (8)*). These Regulations do not apply to Northern Ireland.

These Regulations amend the provisions of the 2005 Regulations to liberalise international passenger services. They also amend the requirements for framework agreements and transfer some regulatory responsibilities in relation to rail link facilities from the Secretary of State to the Office of Rail Regulation.

*Regulation 2(3)* substitutes new provisions on access rights which relate to international groupings, extending the provisions to international passenger services and adding the right to pick up passengers at any station and set them down at another, including within the same Member State. The Office of Rail Regulation has been given authority to limit access rights for international passenger services in certain circumstances.

*Regulation 2(2), (4), (12), (13) and (14)* removes references to "international groupings" from the 2005 Regulations enabling the Regulations to cover any international passenger service.

*Regulation 2(6)* places a requirement on an applicant wanting to operate an international passenger service to give notice to the infrastructure manager and the Office of Rail Regulation in relation to that application. The Office of Rail Regulation must provide a copy of this information to certain specified parties.

*Regulation 2(7)* sets new durations for framework agreements and specifies the conditions that must be met to allow their extension beyond a period of five years. Framework agreements for the rail link facility, and amendments to such agreements, must have the prior approval of the Office of Rail Regulation.

*Regulation 2(5) and (8)* transfers the regulatory functions of the Secretary of State for rail link facilities under regulations 13(3) and 28 of the 2005 Regulations to the Office of Rail Regulation.

*Regulation 2(9)* confers on the Office of Rail Regulation the responsibility of deciding whether a service for the transport of passengers by train is an international passenger service and of deciding, on the request of certain parties, or on its own initiative, whether such a service would compromise the economic equilibrium of a relevant public service contract. In making a decision the Office of Rail Regulation may issue a direction to limit access rights. It also provides that specified parties may request it to reconsider a decision or direction. The Office of Rail Regulation is to publish the criteria it applies. The regulation also permits any person to make an application to the Court to appeal a decision.

*Regulation 2(10)(a)* extends the scope of regulation 31 (provision of information to the regulatory body) of the 2005 Regulations so that the regulation also applies if the Office of Rail Regulation requests information in connection with its functions under regulations 13 (infrastructure costs and accounts) and 29A (regulatory decisions concerning international passenger services). Regulation 2(10)(b) inserts references to Directive 2007/58/EC into regulation 31.

*Regulation 2(11) and (12)* removes references to "transit rights".

*Regulation 2(14)* makes a breach of an obligation to comply with a decision or direction of the Office of Rail Regulation under regulation 29A of the 2005 Regulations (as inserted by regulation 2(9) of these Regulations) actionable by persons sustaining loss, damage or injury caused by that



breach, and makes such an obligation enforceable by the Office of Rail Regulation by way of civil proceedings.

*Regulation 2(15)* corrects a linguistic error in the 2005 Regulations where the English text of Article 8.2 of Directive 2001/14/EC differs from that of the French and German texts. It also corrects transpositional errors made in the 2005 Regulations in relation to discounts.

*Regulation 3* makes consequential amendments to provisions of the Railways Act 1993 (c. 43) and the Greater London Authority Act 1999 (c. 29), which impose restrictions on the disclosure of information, to include references to Directive 2007/58/EC.

A full Impact Assessment of the effect this instrument will have on costs for business and voluntary sectors has been produced and is available from the Rail Network Strategy Division, Department for Transport, Great Minister House, 76 Marsham Street, London SW1P 4DR.

A copy of the Transposition Note is also available from the Department for Transport.

Copies of the Impact Assessment and of the Transposition Note may also be accessed on the Office of Public Sector Information website [www.opsi.gov.uk](http://www.opsi.gov.uk).

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STATUTORY INSTRUMENTS

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£5.50