

2015 No. 0000

TRANSPORT

**The Railways Infrastructure (Access and Management) and
Railway (Licensing of Railway Undertakings) (Amendment)
Regulations 2015**

Made - - - - ***
Laid before Parliament ***
Coming into force - - *** 2015

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, makes the following Regulations:

PART 1

Preliminary

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Railways Infrastructure (Access and Management) and Railway (Licensing of Railway Undertakings) (Amendment) Regulations 2015 and shall come into force on 16th June 2015.

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

Amendments and revocations provisions

2.—(1) The following instruments are revoked—

- (a) the Railways Infrastructure (Access and Management) Regulations 2005(c),
- (b) the Railways Infrastructure (Access and Management) (Amendment) Regulations 2009(d), and
- (c) the Railways Infrastructure (Access and Management) (Amendment) Regulations 2015(e)

(a) S.I. 1996/266, to which there are amendments not relevant to these Regulations.

(b) 1972 c.68. By virtue of the amendment of section 1(2) of the European Communities Act 1972 by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183).

(c) S.I. 2005/3049, amended by S.I. 2009/1122

(d) S.I. 2009/1122.

(e) S.I. [complete when made]

(2) Schedule 1 (amendments) shall have effect.

Interpretation

3.—(1) In these Regulations—

“access rights” means rights of access to railway infrastructure for the purpose of operating a service for the transport of goods or passengers;

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

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

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

“*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 20(4), for the functions and obligations of the infrastructure manager under Part 5 and Schedule 4;

“applicant” means a railway undertaking or an international grouping of railway undertakings or other persons or legal entities, such as competent authorities under Regulation (EC) No 1370/2007 and shippers, freight forwarders and combined transport operators, with a public-service or commercial interest in procuring infrastructure capacity;

“the Channel Tunnel charging framework” means the charging framework set out in the Annex of the IGC regulation;

“the Channel Tunnel Order” means the Channel Tunnel (International Arrangements) (Charging Framework and Transfer of Economic Regulations Functions) Order 2015(d);

“charging body” means a body or undertaking, other than the infrastructure manager, which is responsible, by virtue of regulation 15(8), 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 15 by the Office of Rail Regulation or the infrastructure manager;

“charging system” means the system established by an infrastructure manager to determine access charges under regulation 15(2), (4) or (5);

“competent authority” has the same meaning as in Article 2 of 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 (e);

“the Concessionaires” has the same meanings as in the Channel Tunnel Act 1987(f);

“development agreement” has the same meaning as in the 1996 Act

“the Directive” means Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(g);

“dominant undertaking” means a body or firm which is active and holds a dominant position in the national railway transport services market in which the relevant service facility is used;

(a) 1993 c.43.

(b) Schedule 4A is amended by the Railways Act 2005 (c.14), Schedule 4 and Schedule 13 (Part 1); the Railways and Transport Safety Act 2003 (c.20), Schedule 2 (Part 1, paragraphs 1 and 3); the Enterprise and Regulatory Reform Act 2013 (c.24) Schedule 6 (Part 1, paragraphs 69 and 81) at a date to be appointed; and the Enterprise Act 2002 (c.40), Schedule 25 (paragraphs 30(1) and (15)).

(c) 1996 c.61 to which supplementary provisions relating to the rail link are applied under the Channel Tunnel Rail Link (Supplementary Provisions) Act 2008 (c.5)

(d) S.II [complete when known]

(e) O.J. No. L 315, 3.12.07, p.1.

(f) 1987 ch.53

(g) O.J. No. L 343, 14.12.12, p. 32.

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

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

“framework agreement” means either—

- (a) an access contract described in section 18(2)(a) of the Act(c) 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(d) 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;

“the ICG regulation” has the same meaning as in the Channel Tunnel Order;

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

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

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 20(5) and 15(9) 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(e);

“network statement” means the statement required to be prepared and published under regulation 14;

“nuclear site” has the same meaning as in the Environmental Permitting (England and Wales) Regulations 2010(f);

“public passenger transport” has the same meaning as in Article 2 of Regulation (EC) No 1370/2007;

“public service contract” has the same meaning as in Article 2 of Regulation (EC) No 1370/2007;

“public service operator” has the same meaning as in Article 2 of Regulation (EC) No 1370/2007;

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

(a) 1989 c.29. See section 64, to which amendments have been made which are not relevant to these Regulations.

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

(c) 1993 c.43. Section 18 has been amended by the Transport Act 2000 (c.38) section 230(1) and (2), Schedule 27 paragraphs 17 and 22, and Schedule 31, Part IV; the Railways and Transport Safety Act 2003 (c.20) Schedule 2, Part 1, paragraphs 1 and 3(a), and (b), with savings at Schedule 3; the Railways Act 2005 (c.14), Schedule 1, Part 1, paragraph 12(1) and (3); and by S.I. 2005/3049, Schedule 1, Part 1, paragraph 4(c). Further amendments have been made to this Act which are not relevant to these Regulations.

(d) Section 18 has been amended as described in the previous footnote. Section 17 has been amended by the Transport Act 2000 (c.38) Schedule 27 paragraphs 17 and 21, and Schedule 31, Part IV; the Railways and Transport Safety Act 2003 (c.20) Schedule 2, Part 1, paragraphs 1 and 3(a), with savings at Schedule 3; the Railways Act 2005 (c.14), Schedule 1, Part 1, paragraph 12(1) and (2) and Schedule 11, paragraphs 1 and 3(a); S.I. 1998/1340, regulation 21(5), and by S.I. 2005/3049, Schedule 1, Part 1, paragraph 4 (a) and (b).

(e) 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.

(f) S.I. 2010/675, see Schedule 23 (Part 2, paragraph 1), amended by S.I. 2011/2043.

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

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

“rail link” and “rail link facility” have the same meanings as in the 1996 Act, except that rail link facility shall also include any rail maintenance depot which provides maintenance services primarily for rail vehicles providing services on the rail link to which the rail access is via that rail link

“railway infrastructure” consists of the items described as “network”, “station” and “track”, in section 83 of the Act(b), and platforms and terminals used for freight services 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;
- (c) within a 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;

“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) No 1191/69 and 1107/70(c);

“Regulation 913/2010 (EU) means Regulation (EU) No 913/2010 of the European Parliament and of the Council of 22nd September 2010 concerning a European rail network for competitive freight(d);

“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 20(7);

“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 20(7);

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

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

or which manages a service facility used for this supply, whether or not that body or undertaking is also an infrastructure manager;

“shuttle service” has the same meaning as in the Channel Tunnel Act 1987(e);

“tunnel system” has the same meaning as in the Channel Tunnel Act 1987;

“the Treaty” means the Treaty on the Functioning of the European Union(f);

“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(g); and

(a) 2003 c.20.

(b) Amendments have been made to this section which are not relevant to these Regulations.

(c) O.J. No. L 315, 3.12.07, p.1.

(d) O.J. No. L 276, 20.10.10, p. 22–32

(e) 1987 c.53

(f) O.J. C 326, 26.10.12

(g) 1971 c.80.

“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 Directive shall have the same meaning as in the Directive.

Scope

4.—(1) Subject to paragraphs (2) and (5), Parts 2 and 3 (save for regulation 14), paragraphs (9) and (10) of regulation 15 and regulations 16, 20(5), 34 and Schedule 2 lay down the rules applicable to—

- (a) the management of railway infrastructure; and
- (b) the rail transport activities of the railway undertakings established or to be established in an EEA State.

(2) The provisions referred to in paragraph (1) do not apply to railway undertakings whose activity is limited to the provision of solely urban, suburban or regional services on local and regional stand-alone networks for transport services on railway infrastructure or on networks intended only for the operation of urban or suburban rail services.

(3) Notwithstanding paragraph (2), where a railway undertaking referred to in that paragraph is under the direct or indirect control of an undertaking or another entity performing or integrating rail transport services other than urban, suburban or regional services—

- (a) regulations 8 (management independence), and 13(4) and (5) (business plans) shall apply; and
- (b) regulation 9 (separation of accounts) shall apply with regard to the relationship between the railway undertaking and the undertaking or entity which controls it, directly or indirectly.

(4) Subject to paragraphs (5), (6) and (7), these Regulations, with the exception of the provisions referred to in paragraph (1) and Schedule 1 lay down the principles and procedures applicable to—

- (a) the setting and collection of railway infrastructure charges; and
- (b) the allocation of railway infrastructure capacity

for domestic and international rail traffic.

(5) The following do not apply to the networks listed in paragraph (6)—

- (a) regulation 6 (access to services),
- (b) regulation 10 (independence of service providers from dominant undertakings),
- (c) paragraphs (1), (2) and (3) of regulation 13 (business plans),
- (d) regulation 12 (indicative railway infrastructure strategy),
- (e) regulation 14 (network statement),
- (f) parts 4 (infrastructure charges), 5 (allocation of infrastructure capacity) and 6 (regulation and appeals), and
- (g) Schedules 2 (services to be supplied to applicants), 3 (access charging), 4 (timetable for the allocation process) and 5 (accounting information to be supplied to the Office of Rail Regulation upon request).

(6) The networks referred to in paragraph (5) are—

- (a) local and regional stand-alone networks for passenger services on railway infrastructure;
- (b) networks intended only for the operation of urban or suburban passenger services;
- (c) until such time as capacity is requested by another applicant, regional networks used for regional freight services solely by a railway undertaking referred to in paragraph (2); or
- (d) privately owned railway infrastructure that is used only by the person responsible for that network for the purposes of freight operations.

(7) With the exception of regulations 5, 9(1) and (3), 20(15) and (16)(b), 34 and 37 (so far as it relates to regulation 34), these Regulations do not apply to the business of the Concessionaires in respect of any shuttle service.

(8) Parts 6 and 8 and Schedule 1 apply to all matters within any part of the scope of Parts 2 to 5 and Schedules 2 to 5 and of the Channel Tunnel Order.

PART 2

Access to Railway Infrastructure and Services

Access rights

5.—(1) A railway undertaking is entitled on equitable, non-discriminatory and transparent conditions to such access as may be necessary—

- (a) for the purpose of the operation of any type of rail freight service or international passenger service, including access to infrastructure connecting service facilities referred to in paragraph 2 of Schedule 2; and
- (b) for the purpose of operation of any type of rail freight service also to infrastructure serving or potentially serving more than one final customer.

(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 access rights conferred by paragraphs (1) and (2) are exercisable subject to the provisions of regulation 34, and to paragraph (4).

(4) The Office of Rail Regulation may limit the access provided for in this regulation on services between a place of departure and a destination which are covered by one or more public service contracts which are in accordance with the law of the European Union.

(5) It is the duty of the infrastructure manager to ensure that the entitlements conferred by this regulation are honoured.

(6) Without prejudice to the generality of regulation 33, 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 paragraph (4) or regulation 34, that railway undertaking has a right of appeal to the Office of Rail Regulation in accordance with regulation 33.

Access to services

6.—(1) Subject to paragraph (4), a railway undertaking is entitled to services comprising—

- (a) the minimum access package; and
- (b) the access, including track access, to service facilities and the supply of services

described in paragraphs 1 and 2 of Schedule 2.

(2) The infrastructure manager or, as the case may be, service provider must ensure that the entitlements granted by this regulation are supplied in a non-discriminatory manner.

(3) The Office of Rail Regulation must stipulate a reasonable time limit within which a response to a request for a service described in paragraph 2 of Schedule 2 must be met by a service provider, and the service provider must observe this time limit.

(4) Subject to paragraph (7), where an infrastructure manager or a service provider supplies any of the services described in paragraph 2 of Schedule 2, a request for the supply of such services may only be refused if a viable alternative exists which would enable the applicant to operate the freight or passenger service concerned on the same or an alternative route under economically acceptable conditions.

(5) Where—

- (a) a request referred to in paragraph (3) concerns the supply of services described in subparagraphs 2(a), (b), (c), (d), (f) and (i) of Schedule 2; and
- (b) such request is made to a service provider which is under the direct or indirect control of a dominant undertaking,

the infrastructure manager or service provider shall, in writing, justify any decision to refuse such request, and indicate the viable alternative described in paragraph (4).

(6) Paragraph (4) does not oblige the infrastructure manager or service provider to make investments in resources or facilities in order to accommodate the request.

(7) Where the infrastructure manager or service provider receives conflicting requests for supply of services described in paragraph 2 of Schedule 2, it must attempt to meet all such requests on the basis of demonstrated need.

(8) Where the infrastructure manager or service provider cannot meet a request under paragraph (7), the infrastructure manager or service provider may refuse a request.

(9) Where a service facility described in paragraph 2 of Schedule 2 has not been in use for at least two consecutive years and interest by an applicant for access to this facility has been expressed to the service provider on the basis of demonstrated need, the service provider shall offer the operation of the service facility, or part of it, for lease as a rail service facility, and shall publicise this offer.

(10) Paragraph (9) above shall not apply if the service provider can demonstrate that ongoing redevelopment work reasonably prevents the use of the service facility by any applicant.

(11) Where the infrastructure manager or service provider offers to supply any of the services described in paragraph 3 of Schedule 2 as an additional service it must, in response to a request from an applicant, supply the services to that applicant in a non-discriminatory manner.

(12) An applicant may request the supply of any of the services described in paragraph 4 of Schedule 2 from an infrastructure manager or service provider but that infrastructure manager or service provider is under no obligation to supply the services requested. Where the infrastructure manager or service provider does offer to supply any of these services to applicants, it shall do so in a non-discriminatory manner.

(13) Without prejudice to the generality of regulation 33, if an applicant is denied the entitlements conferred on it by this regulation, including pursuant to a refusal under paragraph (8), that applicant has a right of appeal to the Office of Rail Regulation in accordance with regulation 33.

(14) [In fulfilling their duties under this regulation, the infrastructure manager and service provider shall comply with any relevant provisions regarding procedure and criteria which are set out in Commission Decision [] dated [].]

Cross-border agreements

7.—(1) The Secretary of State must ensure that provisions contained in cross-border agreements to which he is a party do not discriminate between railway undertakings, or restrict their freedom to operate cross-border services.

(2) Without prejudice to the division of competence between the European Union and Member States, the Secretary of State must notify the European Commission of his intention to enter into negotiations on, to conclude or revise a cross-border agreement.

(3) The Secretary of State must keep the European Commission regularly informed of any negotiations referred to in paragraph (3) and, where appropriate, must invite the European Commission to participate as an observer.

(4) The Secretary of State may apply or conclude a new or revised cross-border agreement provided that it is compatible with Union law and does not harm the object and purpose of the transport policy of the Union.

PART 3

Infrastructure Management and Independence of Undertakings

Management independence

8.—(1) Railway undertakings which are directly or indirectly controlled by the United Kingdom as a Member State must, in their management, administration and internal control over administrative, economic and accounting matters, maintain the status of an independent operator and hold, in particular, assets, budgets and accounts which are separate from those of the State.

(2) Subject to the requirements set out in Parts 4 and 5 and Schedules 3 and 4 about the determination of infrastructure charges and the allocation of infrastructure capacity an infrastructure manager must be responsible for its own management, administration and internal control.

Separation of accounts

9.—(1) Any body which incorporates the functions of both infrastructure manager and railway undertaking must—

- (a) prepare and publish separate profit and loss accounts and balance sheets in respect of business relating to the—
 - (i) provision of transport services as a railway undertaking, and
 - (ii) management of railway infrastructure;and
- (b) ensure that public funds granted to such a body are not transferred between that part of the body responsible for the provision of transport services and that responsible for the management of railway infrastructure.

(2) Any body which conducts business activities relating to the provision of both rail freight transport services and passenger transport services must—

- (a) prepare and publish separate profit and loss accounts and balance sheets in respect of each of these business activities;
- (b) account separately for public funds granted for activities relating to the provision of transport services as public service remits in accordance with article 7 of Regulation (EC) No 1370/2007, and
- (c) ensure that public funds described in subparagraph (b) are not transferred to fund activities relating to the provision of other transport services, or any other business.

(3) Accounts for the areas of activity described in paragraphs (1) and (2) must be kept in such a way as to allow for monitoring of—

- (a) the prohibition set out in those paragraphs relating to the transfer of public funds, and
- (b) the use of income from infrastructure charges and surpluses from other commercial activities.

(4) The monitoring of the observance of public service obligations, where stipulated in the terms of a contract required by regulation 20(15) must be carried out by bodies or undertakings which do not provide rail transport services.

Independence of service providers from dominant undertakings

10.—(1) Where the service provider of a service described in paragraph 2 of Schedule 2 is under direct or indirect control of a dominant undertaking, it must hold separate accounts from that undertaking, including separate balance sheets and profit and loss accounts.

(2) Where the service provider of a service described in paragraph 2(a), (b), (c), (d), (f) and (i) of Schedule 2 is under direct or indirect control of a dominant undertaking, it must be independent in organisational and decision making terms from that undertaking.

(3) Paragraph (2) does not require the establishment of a separate legal entity to provide such services, and may be fulfilled by the formation of distinct divisions within a single legal entity.

(4) Where the operation of a service facility is ensured by an infrastructure manager, or a service provider is under the direct or indirect control of an infrastructure manager, the requirements of paragraphs (1) and (2) may be met if regulations 15(9) and (10) and 20(5) are complied with.

Transparent debt relief

11. The Secretary of State shall set up appropriate mechanisms to help reduce any indebtedness of publicly owned or controlled railway undertakings to a level which does not impede sound financial management and which improves their financial situation.

Indicative railway infrastructure strategy

12.—(1) The Secretary of State must, by 19 December 2019 and after consultation with interested parties, publish an indicative railway infrastructure strategy for England and Wales which must—

- (a) be drafted with a view to meeting future mobility needs in terms of the maintenance, renewal and development needs of the railway infrastructure in England and Wales; and
- (b) be based on sustainable financing.

(2) The Scottish Ministers must, by 19 December 2019 and after consultation with interested parties, publish an indicative railway infrastructure strategy for Scotland which must—

- (a) be drafted with a view to meeting future mobility needs in terms of the maintenance, renewal and development needs of the railway infrastructure in Scotland; and
- (b) be based on sustainable financing.

(3) The strategies referred to in paragraphs (1) and (2) above must—

- (a) be in respect of such period as the Secretary of State shall determine, and
- (b) be renewed following this period, in respect of successive periods of time, the length and commencement of which the Secretary of State shall determine.

(4) The strategies described in paragraphs (1) and (2) above shall be known as the indicative railway infrastructure strategy for Great Britain.

(5) In paragraph (2), the term “interested parties” includes the Secretary of State.

Business Plans

13.—(1) Each infrastructure manager must draw up a business plan which is designed for the purpose of ensuring—

- (a) optimal and efficient use, provision and development of the infrastructure; and
- (b) financial balance.

(2) The plan referred to in paragraph (1) must—

- (a) include details of investment and financial programmes;
- (b) provide the means by which the objectives set out in paragraph (1) are to be achieved; and
- (c) take into account the strategy referred to in regulation 12 and the financing provided to it.

(3) The infrastructure manager shall ensure that applicants known to it, and, upon their request, potential applicants, have access to the relevant information and are given the opportunity to express their views on the content on the draft business plan regarding the conditions for access and use of; and the nature, provision and development of the infrastructure before it is approved.

(4) Each railway undertaking must draw up a business plan, which must include their investment and financing programmes, and which is designed for the purpose of ensuring—

- (a) financial equilibrium; and
- (b) other technical, commercial and financial management objectives.

(5) The plan referred to in paragraph (4) must provide the means by which the objectives set out in that paragraph are to be achieved.

(6) The Office of Rail Regulation shall, at least once a year, request confirmation that a business plan has been produced in accordance with paragraphs (1) and (4) and each infrastructure manager or, as the case may be, railway undertaking, to whom such a request is made shall be under an obligation to comply with that request.

(7) For the purposes of regulation 37, a request by the Office of Rail Regulation in accordance with paragraph (6) shall be treated as a request for information.

Network Statement

14.—(1) The infrastructure manager must, following consultation with all interested parties, develop and publish a network statement containing the information relating to its network described in paragraph (4).

(2) Where, by virtue of regulations 15(9) or 20(5) a charging body or, as the case may be, allocation body is responsible for the functions of the infrastructure manager in Parts 4 or 5, that charging body or allocation body must provide the infrastructure manager with such information as is necessary to enable that infrastructure manager to—

- (a) include the information described in paragraph (4) in the network statement; and
- (b) keep the network statement up to date in accordance with paragraph (7).

(3) A service provider who is not the infrastructure manager must provide the infrastructure manager of the infrastructure to which the relevant service facility is connected with such information as is necessary to enable that infrastructure manager to—

- (a) include the information described in paragraph (4)(b) in the network statement; and
- (b) keep the network statement up to date in accordance with paragraph (7).

(4) The information referred to in paragraph (1) is —

- (a) a section setting out the nature of the railway infrastructure which is available to applicants and the conditions of access to it;
- (b) details of conditions and charges for access to and supply of service facilities listed in Schedule 2, including those which are provided by only one supplier, and including information on technical access conditions; or details of a website where such information is available free of charge in electronic format;
- (c) a description of the charging principles and tariffs, including appropriate details of the charging scheme, framework, methodology, rules and, where applicable, scales used in relation to the application of regulations 15, 17, 18, of Schedule 3 and of the Channel Tunnel charging framework as regards both costs and charges;
- (d) information relating to the performance scheme referred to in regulation 17,
- (e) the list of market segments to be published under paragraph 2(9) of Schedule 3, subject to any amendments made by the Office of Rail Regulation;
- (f) information about procedures for dispute resolution and appeal relating to matters of access to rail infrastructure and services, and to the performance scheme referred to in regulation 17;
- (g) a description of the principles and criteria for the allocation of infrastructure capacity, setting out the general capacity characteristics of the infrastructure available and the restrictions on its use, including likely capacity requirements for maintenance;
- (h) the procedures and deadlines in the capacity allocation process and specific criteria employed in that process, in particular—

- (i) the procedures according to which applicants can request infrastructure capacity from the infrastructure manager,
 - (ii) the requirements governing applicants under regulation 20(17),
 - (iii) the timetable for the application and allocation processes, and the procedures which shall be followed to request information on timetabling,
 - (iv) the procedures for timetabling planned and unforeseen maintenance work,
 - (v) principles governing the coordination process regarding requests for infrastructure capacity referred to in regulation 24, which shall reflect the difficulty of arranging international train paths and the effect that modification of such paths might have on other infrastructure managers,
 - (vi) the dispute resolution procedure established as part of the coordination process in accordance with regulation 24(6),
 - (vii) information about the procedures established in accordance with regulation 21(4) for the allocation of infrastructure capacity at an international level, including information about the membership and methods of operation of any representative groups, and all relevant criteria used to assess and allocate infrastructure capacity which crosses more than one network,
 - (viii) the procedures to be followed for congested infrastructure, and any priority criteria for the allocation of congested infrastructure set in accordance with regulation 27(5) and (6),
 - (ix) details of restrictions on the use of infrastructure,
 - (x) the threshold quota to be applied by the infrastructure manager in requiring a train path to be surrendered under regulation 30(1), and
 - (xi) the conditions relating to previous levels of utilisation of capacity to be taken into account by the infrastructure manager in determining priorities in accordance with regulation 30(3);
- (i) details of any section of railway infrastructure which has been designated for use by specified types of rail services in accordance with regulation 26,
 - (j) the findings of any capacity enhancement plan completed in accordance with regulation 29,
 - (k) the measures taken by the infrastructure manager to ensure fair treatment of rail freight services and international services, and in responding to *ad hoc* requests for infrastructure capacity;
 - (l) a template form for requests for capacity and detailed information about the allocation procedures for international train paths;
 - (m) information relating to applications for —
 - (i) a licence, as published under regulation 6(2) of the Railway (Licensing of Railway Undertakings) Regulations 2005(a);
 - (ii) a rail safety certificate issued in accordance with regulation 7 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006(b), and
 - (iii) a Part B certificate issued under Article 39(ii) in the Schedule to the Channel Tunnel (Safety) Order 2007(c);
- or, as an alternative to any of the above, a reference to indicating a website where such information is made available free of charge in electronic format;
- (n) a model agreement for the conclusion of a framework agreement between the infrastructure manager and an applicant in accordance with regulation 22;

(a) S.I. 2005/3050.

(b) S.I. 2006/599, to which there are amendments not relevant to these Regulations.

(c) S.I. 2007/3531, amended by S.I. 2013/407.

(o) criteria to determine failure to use capacity published under regulation 18(3);

(5) The information provided under paragraph 4(a) shall be made consistent, on an annual basis with, or shall refer to, the rail infrastructure registers to be published in accordance with Article 35 of Directive 2008/57/EC of the European Parliament and of the Council of 17th June 2008 on the interoperability of the rail system within the Community (Recast)(a).

(6) The information provided under paragraph 4(c) shall include—

- (a) information on changes to charges referred to in that paragraph already decided upon or foreseen in the next five years, if available; and
- (b) information on charges as well as other relevant information on access applying to services listed in Schedule 2 which are provided only by one supplier.

(7) The infrastructure manager must keep the network statement up to date and modify it as necessary.

(8) The infrastructure manager must publish the network statement in at least two official languages of the European Union not less than four months before the deadline for applications for infrastructure capacity as described under paragraph (4)(h)(iii).

(9) Any fee charged by the infrastructure manager for the provision, on request, of a copy of the network statement must not exceed the cost of producing that copy.

(10) The content of the network statement must be made available free of charge in electronic format on the web portal of the infrastructure manager and must be accessible through a common web portal.

(11) The common web portal referred to under paragraph (10) shall be set up by the infrastructure manager in the framework of its cooperation with infrastructure managers from other Member States, in accordance with regulations 19 and 21.

(12) If the information required under paragraphs (2) or (3) is not provided to the satisfaction of the infrastructure manager, the infrastructure manager may refer the matter to the Office of Rail Regulation for a determination as to whether additional information must be supplied.

(13) Where a matter is referred to the Office of Rail Regulation in accordance with paragraph (12), it is the duty of that Office to make the determination within such period as is reasonable in all the circumstances, and any such determination shall be binding on all parties.

PART 4

Infrastructure Charges

Establishing, determining and collecting charges

15.—(1) Subject to paragraph (3), the Office of Rail Regulation must establish the charging framework and the specific charging rules governing the determination of the fees to be charged in accordance with paragraph (6).

(2) Subject to paragraphs (3) and (9), the infrastructure manager must—

- (a) determine the fees to be charged for use of the infrastructure in accordance with the charging framework, the specific charging rules, and the principles and exceptions set out in Schedule 3; and
- (b) collect those fees.

(3) Paragraphs (1) and (2) do not apply where the infrastructure to which the charge relates is a rail link facility or is part of the tunnel system.

(a) O.J. L 191, 18.7.08, p.1, to which there are amendments not relevant to these Regulations.

(4) Where paragraph (3) applies by reason of the infrastructure to which the charge relates being a rail link facility, the Secretary of State must establish the charging framework through the development agreement, and the infrastructure manager must, subject to paragraph (9)—

- (a) establish the specific charging rules governing the determination of the fees to be charged in accordance with paragraph (6);
- (b) determine the fees to be charged for the use of the infrastructure in accordance with the charging framework, the specific charging rules and the principles and exceptions set out in Schedule 3; and
- (c) collect those fees.

(5) Where paragraph (3) applies by reason of the infrastructure to which the charge relates being part of the tunnel system, the infrastructure manager must subject to paragraph (9)—

- (a) establish the specific charging rules in in accordance with Article 2 of the Channel Tunnel charging framework;
- (b) determine the fees to be charged in accordance with the Channel Tunnel charging framework, the specific charging rules and the principles and exceptions set out in Schedule 3 to these Regulations; and
- (c) collect those fees

(6) Subject to the provisions in paragraphs (1) to (5), the infrastructure manager must—

- (a) charge fees for use of the railway infrastructure for which the infrastructure manager is responsible; and
- (b) utilise such fees as are received to fund the infrastructure manager's business.

(7) A service provider must—

- (a) charge fees for the use of a service facility for which the service provider is responsible; and
- (b) utilise such fees as are received to fund the service provider's business.

(8) Applicants must, subject to the right of appeal to the Office of Rail Regulation provided in regulation 33, pay such fees as are charged by the infrastructure manager or service provider under paragraphs (6) and (7) for use of the railway infrastructure or service facility.

(9) Subject to paragraph (10), an infrastructure manager responsible for any of the functions of the infrastructure manager described in this Part and Schedule 3 must, in its legal form, organisation or decision-making functions, be independent of any railway undertaking and, where it is not so independent, that infrastructure manager must ensure that the functions described in this Part and Schedule 3 are performed by a charging body that is so independent.

(10) The separation required by paragraph (9) does not apply to the function of the collection of fees charged in accordance with paragraph (2)(b), (4)(c), and (5)(c).

(11) The infrastructure manager and service provider must be able to demonstrate to each railway undertaking that the fees invoiced to it under paragraphs (6) or (7) comply with the methodology, rules and, where applicable, scales laid down in the network statement.

(12) Subject to paragraph (13), where information about such fees is necessary for the Office of Rail Regulation to carry out its functions under regulations 32, 33, 35, 36 and Schedule 5 and is requested by the Office of Rail Regulation, the infrastructure manager or service provider must supply the information requested.

(13) The infrastructure manager must respect the commercial confidentiality of information provided to it by applicants for infrastructure capacity.

Infrastructure costs and accounts

16.—(1) Subject to paragraph (6), the authorities designated by paragraphs (2) to (4) must, in the case of the infrastructure in relation to which they are designated by those paragraphs, ensure, in the way set out in the relevant paragraph, that, under normal business conditions and over a

reasonable time period which shall not exceed five years, the accounts of an infrastructure manager shall at least balance—

- (a) income from infrastructure charges;
- (b) surpluses from other commercial activities;
- (c) non-refundable incomes from private sources; and
- (d) state funding, including advance payments from the state

with infrastructure expenditure.

(2) For the purposes of paragraph (1), the Office of Rail Regulation is designated in relation to infrastructure subject to an access charges review, and shall discharge its obligations under that paragraph through that review.

(3) For the purposes of paragraph (1), the Secretary of State is designated in relation to rail link facilities, and shall discharge his obligations under that paragraph through the development agreement.

(4) For the purposes of paragraph (1), the Office of Rail Regulation is designated in relation to infrastructure that is not covered by paragraphs (2) or (3), and shall, in order to discharge its obligations under that paragraph, have the power to issue the Concessionaires with directions limiting, to any extent necessary, their ability to finance infrastructure expenditure out of borrowed funds.

(5) 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), it is the duty of any person to whom a direction is given under regulation 32(4) to comply with and give effect to that direction.

(6) Paragraph (1) is subject to section 2 of the Channel Tunnel Act 1987.

(7) The infrastructure manager must, with due regard to safety and to maintaining and improving the quality of the infrastructure service, be provided with incentives to reduce the costs of provision of infrastructure and the level of access charges.

(8) 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 except the tunnel system, exercise its functions under the Act

in order to ensure that the requirements set out in paragraph (7) are complied with.

(9) In fulfilling its obligations under paragraph (8), the Office of Rail Regulation must base its decisions on an analysis of the achievable cost reductions.

(10) The infrastructure manager must develop and maintain a register of its assets and the assets it is responsible for managing insofar as this information would be used to assess the funding needed to repair or replace such assets.

(11) The register referred to in paragraph (10) shall be accompanied by details of expenditure on renewal and upgrading of the infrastructure.

(12) The infrastructure manager must establish a method for apportioning costs to the different categories of services offered to railway undertakings. Such method shall be updated from time to time on the basis of best international practice.

(13) The infrastructure manager must seek the prior approval from the Office of Rail Regulation for the method for apportioning costs referred to in paragraph (12) in the event the Office of Rail Regulation requires this.

(a) S.I. 1998/3132. Relevant amending instruments are S.I. 2000/2092, 2002/2058, 2003/364, 2003/3361, 2005/352, 2005/3515, 2006/1689, 2007/3543, 2009/3390, 2010/2577, 2012/2208, 2013/262, 2013/1412, 2014/610 and 2014/1233 and the Constitutional Reform Act 2005.

Performance scheme

17.—(1) The infrastructure manager must establish a performance scheme as part of the charging system to encourage railway undertakings and the infrastructure manager to minimise disruption and improve the performance of the railway network.

(2) The performance scheme referred to in paragraph (1) may include—

- (a) penalties for actions which disrupt the operation of the rail network;
- (b) compensation for undertakings which suffer from disruption; and
- (c) bonuses that reward better than planned performance.

(3) The performance scheme referred to in paragraph (1) shall be based on the basic principles listed in paragraph 7 of Schedule 3 and must apply in a non-discriminatory manner throughout the network to which that scheme relates.

(4) The infrastructure manager must, as soon as possible, communicate to the railway undertaking a calculation of payments due under the performance scheme.

(5) A calculation under paragraph (4) must encompass all delayed train runs within a period of at most one month.

(6) Without prejudice to the appeal procedure under regulation 33, in the case of disputes relating to the performance scheme, a dispute resolution system must be made available in order to settle such matters promptly.

(7) This dispute resolution system must be impartial towards the parties involved, and if this system is applied, a decision must be reached within a time limit of 10 working days.

(8) Once a year, the infrastructure manager must publish the annual average level of performance achieved by the railway undertakings on the basis of the main parameters agreed in the performance scheme.

Reservation charges

18.—(1) The infrastructure manager may levy an appropriate charge for capacity that is requested but not used, and the imposition of this charge must provide incentives for efficient use of capacity.

(2) The levy of such a charge on an applicant that was allocated a train path shall be mandatory in the case of a regular failure to use allocated paths or part of them.

(3) For the imposition of this charge, the infrastructure manager must publish in its network statement the criteria to determine such failure to use. The Office of Rail Regulation shall control such criteria in accordance with regulations 33 and 35.

(4) The infrastructure manager must provide, at the request of any interested party, information about the infrastructure capacity allocated to applicants.

Cooperation in relation to charging systems on more than one network

19.—(1) The infrastructure manager must cooperate with other infrastructure managers within the European Union to enable the application of efficient charging schemes, and must associate with them to coordinate the charging or to charge for the operation of train services which cross more than one infrastructure network of the rail system within the European Union.

(2) The infrastructure manager must, in particular, aim to guarantee the optimal competitiveness of international rail services and ensure the efficient use of the railway networks. To this end the infrastructure manager must cooperate with other infrastructure managers in the European Union to establish appropriate procedures, subject to the rules set out in these Regulations.

(3) For the purpose of paragraph (1) the infrastructure manager must cooperate with other infrastructure managers within the European Union to enable mark-ups as referred to in Schedule 3 paragraph 2, and performance schemes, as referred to in regulation 17 to be efficiently applied for traffic crossing more than one network of the rail system within the European Union.

PART 5

Allocation of Infrastructure Capacity

Capacity allocation

20.—(1) Subject to paragraphs (2) and (3), whilst respecting the requirements for management independence stipulated in regulation 8, the Office of Rail Regulation or, in the case of a rail link facility, the Secretary of State, may establish a framework for the allocation of infrastructure capacity.

(2) Subject to paragraph (3), paragraph (1) does not apply to the allocation of infrastructure capacity within the tunnel system.

(3) The framework for the allocation of capacity referred to in paragraphs (1) shall, in the case of infrastructure comprised in a freight corridor established under Regulation (EU) No 913/2010(a), be defined by the executive board of that corridor, within the meaning of that Regulation and, in such a case, paragraph (2) shall not apply.

(4) The infrastructure manager shall, subject to paragraph (5), be responsible for the establishment of specific capacity allocation rules and for the process of allocating infrastructure capacity in respect of the infrastructure for which it has responsibility.

(5) An infrastructure manager responsible for any of the functions of the infrastructure manager described in this Part and Schedule 4 must, in its legal form, organisation or decision-making functions, be independent of any railway undertaking and, where he is not so independent, that infrastructure manager must ensure that the functions of the infrastructure manager described in this Part are performed by an allocation body that is so independent.

(6) Subject to paragraph (12), any applicant may apply to the infrastructure manager for the allocation of infrastructure capacity.

(7) In order to use such capacity, an applicant which is not a railway undertaking must appoint a railway undertaking to conclude a contract with the infrastructure manager under paragraph (15). This is without prejudice to the right of the applicant to conclude an agreement with the infrastructure manager under regulation 23(1).

(8) 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.

(9) When the Office of Rail Regulation receives a notice from an applicant under paragraph (8), 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 (8) with a copy of the information in relation to that service provided to it in accordance with that paragraph.

(10) The infrastructure manager must ensure that the allocation process is conducted in accordance with the timetable set out in Schedule 4.

(11) Subject to paragraph (13), an applicant who has been granted capacity by the infrastructure manager, whether that capacity is in the form of—

(a) a framework agreement made in accordance with regulation 22 specifying the characteristics of the infrastructure granted; or

(b) specific infrastructure capacity in the form of a train path

must not trade that capacity with another applicant or transfer it to another undertaking or service.

(a) O.J. No. L 276, 20.10.10, p. 22–32

(12) Any person who trades in capacity contrary to the provisions of paragraph (11) shall not be entitled to apply for capacity under paragraph (6) for the period of the working timetable period to which the allocation of capacity transferred related.

(13) The use of capacity by a railway undertaking on behalf of an applicant who is not a railway undertaking, in order to further the business of that applicant, is not a transfer for the purposes of paragraph (12).

(14) The infrastructure manager must not allocate capacity in the form of specific train paths for any period in excess of one working timetable period.

(15) Any railway undertaking engaged in rail transport services shall conclude the necessary agreements under public or private law with the infrastructure manager of the railway infrastructure of the railway infrastructure used.

(16) The infrastructure manager must—

- (a) ensure that infrastructure capacity is allocated on a fair and non-discriminatory basis;
- (b) ensure that the agreements referred to in paragraph (12) are non-discriminatory, transparent, and in accordance with the requirements of these Regulations; and
- (c) respect the confidentiality of information supplied to him as part of the capacity allocation process, including the identity of other applicants during disclosure under regulation 24(5), unless the relevant applicant has agreed to disclosure of their identity.

(17) The infrastructure manager may set requirements with regard to applicants to ensure that its legitimate expectations about future revenues and utilisation of the infrastructure are safeguarded.

(18) Requirements under paragraph (17)—

- (a) must be appropriate, transparent and non-discriminatory and shall be specified in the network statement; and
- (b) may only include the provision of a financial guarantee by an applicant if the level of such guarantee does not exceed an appropriate level and is proportional to the contemplated level of activity of the applicant, and where such guarantee provides assurance of the applicant's capability to prepare compliant bids for infrastructure capacity.

(19) The infrastructure manager must set any requirement under paragraph (17) in accordance with the criteria contained in Commission Implementing Regulation (EU) 2015/10 of 6th January 2015 on criteria for applicants for infrastructure capacity and repealing Implementing Regulation (EU) No. 870/2014(a)

(20) In reserving infrastructure capacity for the purposes of scheduled track maintenance, as requested under regulation 23(5), the infrastructure manager must take into account the effect of that reservation on applicants.

Co-operation in the allocation of infrastructure capacity crossing more than one network

21.—(1) This regulation applies to the allocation of infrastructure capacity in the form of a train path crossing more than one network of the rail system within the European Union.

(2) Infrastructure managers must—

- (a) co-operate to enable the efficient creation and allocation of infrastructure capacity to which this regulation applies, including under framework agreements referred to in regulation 22, and
- (b) before consulting on the draft working timetable in relation to relevant train paths agree with the other relevant infrastructure managers which international train paths are to be included in that draft working timetable.

(3) The international train paths referred to in paragraph 2(b) may only be adjusted if absolutely necessary.

(a) O.J. No. L3, 7.1.15, p.34

(4) The infrastructure managers must establish such procedures as are appropriate, in accordance with the requirements set out in these Regulations, to enable the co-operation referred to in paragraph 2(a) to take place, and such procedures must include coordination with representatives of the infrastructure managers whose allocation decisions have an impact on one or more other infrastructure managers.

(5) Allocation of infrastructure capacity under paragraph (2) shall be without prejudice to the specific rules contained in European Union law on rail freight oriented networks.

(6) The procedures established by virtue of paragraph (4) may permit appropriate representatives of infrastructure managers outside the European Union to be associated with these procedures.

(7) The infrastructure managers must inform the European Commission of and invite representatives to attend, as an observer, main meetings at which common principles and practices for the allocation of infrastructure are developed, as an observer.

(8) The infrastructure manager must provide the Office of Rail Regulation with sufficient information about the development of common principles and practices for the allocation of infrastructure developed and from any IT-based allocation systems, to allow it to perform its regulatory supervision under regulations 32, 33, 35, and 36.

(9) At any meeting or other activity undertaken to facilitate the allocation of infrastructure capacity across more than one network, decisions may only be taken by representatives of the relevant infrastructure managers.

(10) In acting in accordance with paragraph (2) the infrastructure managers must assess the need for and, where necessary, propose and organise international train paths in such a way as to enable *ad hoc* capacity for freight services to be granted in accordance with regulation 25.

(11) The prearranged train paths referred to in paragraph (10) must be made available to applicants through any infrastructure manager who participates in the international co-ordination of train paths referred to in this regulation.

Framework agreements

22.—(1) Subject to the requirements of this regulation, and without prejudice to articles 101, 102 and 106 of the Treaty, an infrastructure manager may enter into a framework agreement with an applicant for the purpose of specifying the characteristics of the infrastructure capacity required by and offered to the applicant over a period of time exceeding one working timetable period.

(2) An applicant who is a party to a framework agreement must apply for the allocation of capacity in accordance with the terms of that agreement.

(3) Whilst seeking to meet the legitimate commercial needs of the applicant and subject to paragraph (11), a framework agreement must not specify any train path in detail.

(4) The effect of a framework agreement must not be such as to preclude the use of the railway infrastructure subject to that framework agreement by other applicants or services.

(5) A framework agreement must contain terms permitting the amendment or limitation of any condition contained in that framework agreement if such amendment or limitation would enable better use to be made of the railway infrastructure.

(6) A framework agreement may contain penalties applicable on modification or termination of the agreement by any party.

(7) Other than in circumstances described in paragraphs (8), (9) and (10), a framework agreement made in accordance with paragraph (1) shall in principle be for a period of five years, renewable for periods equal to its original duration; provided that the infrastructure manager may agree to a shorter or longer period in specific cases.

(8) Subject to paragraphs (9) and (10), a framework agreement for a period longer than five years must be justified by the existence of commercial contracts, specialised investments or risks.

(9) Subject to paragraph (10), a framework agreement in relation to infrastructure which has been designated in accordance with regulation 26(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.

(10) 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.

(11) An application for a designated infrastructure framework agreement to which paragraph (9) or (10) 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.

(12) The infrastructure manager may reduce capacity reserved under the terms of a designated infrastructure framework agreement to which paragraph (9) or (10) 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.

(13) Whilst respecting commercial confidentiality, the general nature of each framework agreement must be made available by the infrastructure manager to any interested party.

(14) This regulation is without prejudice to section 18 of the Act(a) in the case of a framework agreement which is an access contract to which that section applies.

(15) 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.

(16) Nothing in these Regulations has the effect of applying any of sections 17 to 22C of the Act(b) to a rail link facility.

(17) In fulfilling its duties under this regulation the infrastructure manager must observe the measures relating to the procedure and criteria for the application of this regulation set out in Commission Decision []; and the provisions of this regulation, other than paragraph 15 and 16 shall be subject to such measures.

Application for infrastructure capacity

23.—(1) Applicants may submit a request to the infrastructure manager for an agreement granting rights to use railway infrastructure against a charge as provided for in Part 4.

(2) An applicant wishing to apply for infrastructure capacity must submit an application to the infrastructure manager in accordance with the timetable for the allocation process set out in Schedule 4.

(3) Without prejudice to Regulation (EU) No. 913/2010(c) applicants may submit a request to a single infrastructure manager, or to a joint body established by the relevant infrastructure managers, for infrastructure capacity in the form of a train path crossing more than one network.

(4) Where an application under paragraph (3) is made to a single infrastructure manager, that infrastructure manager is permitted to act on behalf of that applicant in seeking the infrastructure capacity requested.

(5) Requests for infrastructure capacity to enable maintenance of the network to be carried out must be submitted in accordance with the timetable set out in Schedule 4.

(6) The infrastructure manager must inform, as soon as possible, interested parties about the unavailability of infrastructure capacity due to unscheduled maintenance work.

(a) 1993 c.43. Amendments to section 18 have been footnoted earlier and are not relevant to this Regulation.

(b) Amendments to sections 17 and 18 have been footnoted earlier and are not relevant to this Regulation. There are amendments to sections 19 to 22C inclusive which are not relevant to these Regulations.

(c) O.J. No. L 276, 20.10.10, p. 22–32

Scheduling and co-ordination

24.—(1) The infrastructure manager must, so far as possible—

- (a) meet all requests for infrastructure capacity, including those requests for train paths which cross more than one network; and
- (b) in so doing, take account of all constraints on applicants, including the economic effect on their business.

(2) The infrastructure manager may give priority to specific services within the scheduling and co-ordination process, but only in accordance with the provisions in regulations 26 and 27.

(3) The infrastructure manager must consult interested parties about the draft working timetable, and must allow such interested parties a period of at least one calendar month to submit their comments.

(4) In the event of conflict between different requests for infrastructure capacity, the infrastructure manager must attempt, in consultation with the appropriate applicants, and through co-ordination of the requests, to ensure the best possible matching of all requirements and, in so far as it is reasonable to do so, may propose alternative infrastructure capacity from that requested in order to resolve the conflict.

(5) Consultation under paragraph (4) shall be based on the disclosure by the infrastructure manager of the following information within a reasonable time, free of charge and in written or electronic form—

- (a) train paths requested by all other applicants on the same routes;
- (b) train paths allocated on a preliminary basis to all other applicants on the same routes;
- (c) alternative train paths proposed on the relevant routes in accordance with paragraph (4); and
- (d) full details of the criteria being used in the capacity allocation process.

(6) The infrastructure manager must facilitate the establishment and operation of a dispute resolution system, which must be set out in the network statement, to resolve disputes about the allocation of infrastructure capacity and, where that system is applied, a decision on the matters in dispute must be reached no later than ten working days after the final submission of all relevant information in accordance with that system.

(7) The dispute resolution system provided for in subsection (6) shall be without prejudice to the right of appeal to the Office of the Rail Regulation under regulation 33(1).

(8) The infrastructure manager must take such measures as are appropriate to deal with any concerns about the allocation process raised by interested parties.

(9) For the purposes of this regulation “interested parties” includes—

- (a) all applicants for infrastructure capacity as part of the specific allocation process to which the draft working timetable relates; and
- (b) other parties who have indicated to the infrastructure manager, in such form or manner as the infrastructure manager may from time to time require, that they wish to have the opportunity to comment as to the effect that the working timetable might have on their ability to procure rail services during the working timetable period to which the draft working timetable relates.

Ad hoc requests

25.—(1) In addition to making an application for capacity in accordance with the annual timetable process described in regulation 23, an applicant may submit *ad hoc* requests for infrastructure capacity in the form of individual train paths to the infrastructure manager.

(2) The infrastructure manager must respond to a request described in paragraph (1) as quickly as possible and, in any event, no later than five working days from receipt of the request.

(3) The infrastructure manager must make available, to all potential applicants for such individual train paths, information about available spare capacity on the network for which it is responsible.

(4) The infrastructure manager must, including in the case of congested infrastructure, undertake an evaluation of the need for reserve capacity to be kept available within the final working timetable to enable it to respond rapidly to foreseeable *ad hoc* requests for infrastructure capacity.

Declaration of specialised infrastructure

26.—(1) Subject to paragraph (2), all infrastructure capacity must be available for the use of all types of rail transport service which conform to the characteristics necessary for use of that infrastructure, as defined in the infrastructure manager's network statement.

(2) Subject to the provisions set out in paragraph (3) and without prejudice to articles 101, 102 and 106 of the Treaty, an infrastructure manager may designate particular infrastructure for use by specified types of rail service and, once the infrastructure is so designated, may give priority to that specified type of rail service in the allocation of infrastructure capacity.

(3) Those provisions are that—

- (a) suitable alternative routes for other types of rail transport service must exist and be available;
- (b) before making such a designation the infrastructure manager must consult—
 - (i) the Secretary of State,
 - (ii) where an element of the infrastructure which it is proposed to designate is in Scotland, Scottish Ministers,
 - (iii) the Office of Rail Regulation, and
 - (iv) all other interested parties; and
- (c) such designation must not prevent the use of that designated infrastructure by other types of rail transport service when capacity is available.

Congested infrastructure

27.—(1) Where, after the co-ordination of requests for capacity and consultation with the applicants in accordance with regulation 24(4), it is not possible for the infrastructure manager to satisfy requests for infrastructure capacity adequately, the infrastructure manager must declare that element of the infrastructure on which such requests cannot be satisfied to be congested.

(2) Where, during the preparation of the working timetable for the next timetable period, the infrastructure manager considers that an element of the infrastructure is likely to become congested during the period to which that working timetable relates, he must declare that element of the infrastructure to be congested.

(3) When infrastructure has been declared to be congested under the provisions of this regulation the infrastructure manager must inform—

- (a) existing users of that infrastructure;
- (b) new applicants for infrastructure capacity which includes that element of the infrastructure which has been declared to be congested;
- (c) the Office of Rail Regulation;
- (d) the Secretary of State; and
- (e) where any element of the infrastructure which has been declared to be congested is in Scotland, Scottish Ministers.

(4) Where infrastructure has been declared to be congested in accordance with paragraphs (1) or (2) the infrastructure manager must undertake a capacity analysis of the congested infrastructure, as described in regulation 28, unless a capacity enhancement plan, as described in regulation 29, is in the process of being implemented.

(5) When an element of the infrastructure has been declared to be congested in accordance with paragraphs (1) or (2) and either—

- (a) a charge as described in paragraph 1(8) of Schedule 3 has not been levied; or
- (b) the charge described in sub-paragraph (a) has been levied but has not achieved a satisfactory result,

the infrastructure manager may set priority criteria for the allocation of infrastructure capacity which includes that congested element of the infrastructure.

(6) The priority criteria referred to in paragraph (5) must—

- (a) take account of the importance of a service to society, relative to any other service which will consequently be excluded; and
- (b) ensure that freight services, and in particular international freight services, are given adequate consideration in the determination of those criteria.

(7) If during the course of the working timetable period to which the declaration of congested infrastructure relates, but before the completion of the capacity analysis, the congestion is resolved, the infrastructure manager may revoke the declaration made in accordance with paragraph (1).

(8) Where paragraph (7) applies, the infrastructure manager must inform the persons referred to in paragraph (3) that the declaration has been revoked.

Capacity analysis

28.—(1) Where required in accordance with regulation 27(4), the infrastructure manager must carry out a capacity analysis of the congested infrastructure in order to identify the reasons for the congestion and the measures which might be taken in the short and medium term to ease that congestion.

(2) In conducting the capacity analysis, and in order to identify the reasons for the congestion, the infrastructure manager must consider the—

- (a) characteristics of the congested infrastructure;
- (b) operating procedures used on that infrastructure; and
- (c) characteristics of the different rail services which have been allocated capacity to operate on that infrastructure.

(3) In seeking to determine measures to alleviate congestion the infrastructure manager must consider, in particular—

- (a) re-routing of services;
- (b) re-timing of services;
- (c) alterations to the line-speed; and
- (d) infrastructure improvements.

(4) The infrastructure manager must consult the Secretary of State or, where any part of the capacity analysis relates to railway infrastructure in Scotland, Scottish Ministers, during the preparation of the capacity analysis.

(5) The infrastructure manager must complete the capacity analysis within six months from the date on which the infrastructure is declared to be congested in accordance with regulation 27(1) or (2) and make the findings of the analysis available to the parties described in regulation 27(3).

Capacity enhancement plan

29.—(1) The infrastructure manager must, within six months of the publication of a capacity analysis in accordance with regulation 28, produce a capacity enhancement plan.

(2) In producing the capacity enhancement plan, the infrastructure manager must—

- (a) consult such interested parties as he considers necessary, including those described in regulation 27(3); and
 - (b) at least one month before the deadline for completion of the plan seek the prior approval of the Secretary of State or, if any part of the capacity enhancement plan relates to infrastructure in Scotland, Scottish Ministers, to the capacity enhancement plan.
- (3) The capacity enhancement plan must identify the—
- (a) reasons for the congestion;
 - (b) likely future development of traffic;
 - (c) constraints on infrastructure development; and
 - (d) options for and costs of enhancing the capacity, including the potential effect on access charges.
- (4) On the basis of a cost benefit analysis of the potential measures for action identified in the capacity enhancement plan, that plan must include—
- (a) details of the action to be taken to enhance the capacity of the congested infrastructure; and
 - (b) a timetable for the completion of the detailed measures identified in accordance with subparagraph (a).
- (5) Subject to paragraph (6), if the utilisation of capacity on that element of the infrastructure which is the subject of the capacity enhancement plan attracts a scarcity charge, in accordance with paragraph 1(8) of Schedule 3, the infrastructure manager must cease the levying of such charge in situations where—
- (a) paragraph (1) applies but it does not produce a capacity enhancement plan for that part of the infrastructure which is subject to the scarcity charge, as required by this regulation; or
 - (b) it fails to make progress with implementation of those areas of the action plan produced in accordance with paragraph (4).
- (6) Paragraph (5) does not apply where—
- (a) the action plan produced in accordance with paragraph (4) cannot be implemented for reasons beyond the immediate control of the infrastructure manager; or
 - (b) the options identified in that action plan are not economical or financially viable,
- provided that prior approval to continue to levy the scarcity charge is obtained from the Office of Rail Regulation or, in the case of a rail link facility, the Secretary of State.
- (7) At the end of the six month period starting with the publication of the capacity analysis in accordance with regulation 28, whether or not the approval sought under paragraph (2)(b) has been received, the infrastructure manager must provide the parties consulted under paragraph (2)(a) with a copy of the plan and the timetable for completion of the measures identified to resolve the congestion.

Use of train paths

30.—(1) Subject to paragraph (2) the infrastructure manager must, in particular where infrastructure has been declared to be congested in accordance with regulation 27, require an applicant who has, over a period of at least one month, used a train path less often than the threshold quota stipulated in the network statement, to surrender that train path.

(2) Paragraph (1) does not apply if, in the view of the infrastructure manager, the failure to use the train path in accordance with the threshold quota stipulated in the network statement arose as a result of non-economic reasons outside the control of the applicant.

(3) The infrastructure manager must in the network statement specify conditions under which previous levels of capacity utilisation will be taken into account in determining the priorities to be used in making decisions on the allocation of capacity.

Special measures to be taken in the event of disruption

31.—(1) In the event of disruption to train movements caused by technical failure or accident, the infrastructure manager must take all such steps as are necessary to restore the normal operation of the network.

(2) The infrastructure manager must have in place a contingency plan listing the various bodies who are required to be informed in the event of a serious incident or serious disruption to train movements.

(3) The infrastructure manager may, in the event of an emergency and where absolutely necessary on account of a breakdown which renders a part of the infrastructure temporarily unusable, withdraw allocated train paths without warning and with immediate effect for such period as is necessary to repair the affected infrastructure.

(4) Subject to paragraph (5), the infrastructure manager may, if it deems it to be necessary, require applicants to make available to it such resources as the infrastructure manager considers appropriate to restore the normal operation of the network as quickly as possible.

(5) Where a contract or framework agreement between an applicant and the infrastructure manager incorporates conditions as to the special measures to be taken in the event of disruption, the resources required by the infrastructure manager under paragraph (4) must be in accordance with those conditions.

PART 6

Regulation and Appeals

Regulatory body

32.—(1) Section 4(a) of the Act has effect, to the extent relevant and consistent with the Directive, as if the reference to the functions assigned or transferred to the Office of Rail Regulation under or by virtue of Part 1 of the Act included the functions assigned to it under or by virtue of these Regulations.

(2) The Office of Rail Regulation must ensure that charges for the use of railway infrastructure imposed by the infrastructure manager comply with the requirements of Part 4 and Schedule 3.

(3) Negotiations between an applicant and the infrastructure manager about the level of infrastructure charges shall only be permitted if these are carried out under the supervision of the Office of Rail Regulation and, if such negotiations are likely to contravene the requirements of these Regulations, it shall be the duty of the Office of Rail Regulation to intervene.

(4) The Office of Rail Regulation may in particular, as part of the intervention mentioned in paragraph(3), issue such directions to the applicant or the infrastructure manager as it considers requisite for the purpose of ensuring that no contravention arises or, to the extent that a contravention has arisen, that it ceases.

(5) Without prejudice to the right of any person to make an application to the court under Part 54 of the Civil Procedure Rules 1998(b), it is the duty of any person to whom a direction is given under paragraph (4) to comply with and give effect to that direction.

(a) section 4(1) was amended by the Railways and Transport Safety Act 2003, section 16(5), Schedule 2, Part 1, paragraphs 1 and 3; the Transport Act 2000, section 224(1), (2)(a), (b) and (d); the Railways and Transport Safety Act 2003, section 16(5), Schedule 2, Part 1, paragraphs 1 and 3(b); and the Railways Act 2005, section 3(1) and (2). There are further amendments to section 4 which are not relevant to these Regulations. section 4(1) was amended by the Railways and Transport Safety Act 2003, section 16(5), Schedule 2, Part 1, paragraphs 1 and 3; the Transport Act 2000, section 224(1), (2)(a), (b) and (d); the Railways and Transport Safety Act 2003, section 16(5), Schedule 2, Part 1, paragraphs 1 and 3(b); and the Railways Act 2005, section 3(1) and (2). There are further amendments to section 4 which are not relevant to these Regulations.

(b) S.I. 1998/3132. Relevant amending instruments are S.I. 2000/2092, 2002/2058, 2003/364, 2003/3361, 2005/352, 2005/3515, 2006/1689, 2007/3543, 2009/3390, 2010/2577, 2012/2208, 2013/262, 2013/1412, 2014/610 and 2014/1233 and the Constitutional Reform Act 2005.

(6) Where the Office of Rail Regulation, by virtue of regulation 33(4) prescribes the manner and form of any notification or appeal to be lodged in accordance with these regulations, that Office must make that prescription and details of such manner and form publicly available.

(7) Without prejudice to the requirements of paragraph 18 of Schedule 1 to the Railways and Transport Safety Act 2003^(a), procedural arrangements made by the Office of Rail Regulation under paragraph 8 of that Schedule must ensure that a person with ultimate responsibility for taking a decision under the regulations 33 (appeals to the regulatory body), 35 (competition in the rail services market) and 36 (audits) complies with the criteria listed in paragraph (8).

(8) The criteria referred to in paragraph (7) are that such person

- (a) must make an annual declaration of—
 - (i) their commitment to the impartial fulfilment of their duties under these Regulations, and
 - (ii) any direct or indirect interest which may be considered prejudicial to their independence and which might influence their performance of any function;
- (b) must withdraw from decision making in cases which concern an undertaking with which they have had a direct or indirect connection in the year before the commencement of any procedure relating to a decision described in paragraph (7);
- (c) must not seek or take instructions from any government or other entity when carrying out their functions; and
- (d) must have no professional position or responsibility with any regulated railway undertaking or entity for a period of not less than a year commencing at the end of their term of employment to take decisions under paragraph (7).

Appeals to the regulatory body

33.—(1) Subject to paragraph (3), an applicant has a right to appeal to the Office of Rail Regulation if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager, an allocation body, a charging body, a service provider or, as the case may be, a railway undertaking, concerning any of the matters described in paragraph (2).

(2) Those matters are—

- (a) the network statement produced in accordance with regulation 14, in its provisional and final versions;
- (b) the information which, by virtue of regulation 14(4), must be included in that network statement;
- (c) the allocation process and its result as prescribed in Part 5 and Schedule 4;
- (d) the charging scheme and charging system;
- (e) the level or structure of infrastructure fees, the principles of which are prescribed in Part 4 and Schedule 3, which it is, or may be, required to pay;
- (f) the arrangements for access provided for under Part 2 and Schedule 2; and
- (g) access to and charging for services provided for under Part 2 and Schedule 2.

(3) Where the matter of an appeal under paragraph (1) is one in relation to which directions may be sought from the Office of Rail Regulation under sections 17 or 22A of the Act, the applicant must lodge the appeal by way of an application under the relevant section and, subject to any applicable provisions of these Regulations, the appropriate provisions of that Act shall apply to the consideration of that application.

(a) 2003 c.20 to which amendments have been made which are not relevant to these Regulations.

(4) Where the matter of an appeal under paragraph (1) is one to which paragraph (3) does not apply, the applicant must lodge the appeal by way of an application under this regulation, in such a form and manner as the Office of Rail Regulation may from time to time prescribe.

(5) Where the matter of an appeal under paragraph (1) is one to which paragraph (3) does not apply, the Office of Rail Regulation must—

- (a) as appropriate, ask for all relevant information and initiate a consultation with the relevant parties within one month of the date of receipt of the appeal; and
- (b) within a predetermined and reasonable time, and, in any case, within six weeks of the date of receipt of all relevant information (including information provided pursuant to regulation 37)—
 - (i) make a decision;
 - (ii) inform the relevant parties of its decision, providing reasons for this;
 - (iii) where appropriate, issue a direction to the infrastructure manager, allocation body, charging body, service provider or, as the case may be, railway undertaking, to remedy the situation from which the appeal arose; and
 - (iv) publish the decision.

(6) Where a decision or direction under paragraph (5) 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 (7), take into account any representations made by, the Secretary of State before making or issuing such a decision or direction.

(7) Where paragraph (6) applies and, following consultation, the Secretary of State submits representations, the Office of Rail Regulation must, before making or issuing a decision or direction, consult such interested parties as it considers appropriate on the representations submitted by the Secretary of State.

(8) When appeal under paragraph (1) contests a decision that a viable alternative described in regulation 6(4) does not exist so as to justify a request under that regulation being subject to restrictions or refusal, a decision under paragraph 5 must include a determination as to whether, in respect of the access and provision of services to which the appeal relates, a viable alternative exists.

(9) When an appeal under paragraph (1) contests a decision to refuse or restrict the provision of services in circumstances where there are conflicting requests as described in paragraph 6(7), a determination under paragraph 5 shall include a determination, as appropriate and in respect of the circumstances to which the appeal relates, of—

- (a) whether a viable alternative described in regulation 6(4) exists;
- (b) whether it is possible to accommodate the conflicting requests on the basis of demonstrated need; and
- (c) whether, and if so, what part of the service capacity must be granted to the appellant.

(10) Where a decision under paragraph 5 concerns a refusal by an infrastructure manager or allocation body to allocate infrastructure capacity, or concerns an appeal against the terms of an offer of infrastructure capacity, the Office of Rail Regulation must, in such decision, either—

- (a) confirm that no modification of the infrastructure manager or allocation body's decision is required; or
- (b) require modification of that decision and issue directions to that effect.

(11) 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) S.I. 1998/3132. Relevant amending instruments are S.I. 2000/2092, 2002/2058, 2003/364, 2003/3361, 2005/352, 2005/3515, 2006/1689, 2007/3543, 2009/3390, 2010/2577, 2012/2208, 2013/262, 2013/1412, 2014/610 and 2014/1233 and the Constitutional Reform Act 2005.

- (a) a decision by the Office of Rail Regulation on an appeal brought under this regulation 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.

Regulatory decisions concerning international passenger services

34.—(1) The Office of Rail Regulation must at the request of a relevant competent authority, an interested railway undertaking or other party, determine whether a service for the transport of passengers by train is an international passenger service.

(2) [In fulfilling its function under paragraph (1), the Office of Rail Regulation shall follow the procedure and criteria set out in Commission Decision dated [](a)]

(3) The Office of Rail Regulation 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 5 by an applicant for infrastructure capacity notified under regulation 20(8) 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)), relevant parties are a competent authority that awarded a relevant public service contract, a competent authority with a right to limit access along the route of the international passenger service notified under regulation 20(8), a railway undertaking which is a relevant public service operator and the infrastructure manager concerned.

(5) Within one month of receipt of a request under paragraph (3), the Office of Rail Regulation must consider information provided (including information provided pursuant to regulation 37), and, as appropriate, ask for further relevant information from, and initiate consultation with all relevant parties.

(6) The Office of Rail Regulation must, within six weeks of receipt of all relevant information and of any representations given by the Secretary of State under paragraph (9), as appropriate—

- (a) complete a consultation initiated under paragraph (5), or under paragraph (9) if such consultation is required;
- (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 in a framework agreement if the exercise of the 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, they may request a reconsideration of the decision or direction or both.

(7) Where the Office of Rail Regulation 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 Regulation 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 (including information provided pursuant to regulation 37) and of any representations made by the Secretary of State under paragraph (9)—

- (a) make a reconsidered decision on the request; and

(a) [...]

- (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) Where a decision or direction under paragraphs (6) or (8) 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 (10), take into account any representations made by the Secretary of State before making or issuing such a decision or direction.

(10) Where paragraph (9) 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 relevant parties as it considers appropriate on the representations submitted by the Secretary of State.

(11) 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 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 the Office of Rail Regulation.

(12) 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) a decision by the Office of Rail Regulation on a request made under paragraph (3) 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.

(13) [Without prejudice to paragraphs (9) and (10) the procedure and criteria to be applied by the Office of Rail Regulation in the performance of its functions paragraphs (3) to (9) of this regulation shall be subject to, and include the relevant procedures and criteria set out in Commission Decision [](b)].

Competition in the rail services markets

35.—(1) The Office of Rail Regulation must monitor competition in the rail services markets, including the rail freight transport market.

(2) In particular it must control points (a) to (g) of regulation 33(2) on its own initiative and with a view to preventing discrimination against applicants; and check whether the network statement contains discriminatory clauses or creates discretionary powers for the infrastructure manager that may be used to discriminate against applicants.

(3) The Office of Rail Regulation must where appropriate and on its own initiative give appropriate directions to correct—

- (a) discrimination against applicants;
- (b) market distortion; or
- (c) undesirable developments in relation to competition in the rail services markets, in particular with reference to points (a) to (g) of paragraph 33(2).

(4) Without prejudice to the right of any person to make an application to the court under Part 54 of the Civil Procedure Rules 1998, it is the duty of any person to whom a direction is given under paragraph (3) to comply with and give effect to that direction.

(a) S.I. 1998/3132. Relevant amending instruments are S.I. 2000/2092, 2002/2058, 2003/364, 2003/3361, 2005/352, 2005/3515, 2006/1689, 2007/3543, 2009/3390, 2010/2577, 2012/2208, 2013/262, 2013/1412, 2014/610 and 2014/1233 and the Constitutional Reform Act 2005.

(b) [...]

(5) The Office of the Rail Regulation and the safety authority for the Channel Tunnel within the meaning of the Railways (Interoperability) Regulations 2011^(a) must cooperate closely, in particular with a view jointly to develop a framework for information-sharing and cooperation aimed at preventing adverse effects on competition or safety in the rail market.

(6) The framework must include a mechanism for—

- (a) the Office of Rail Regulation to provide the safety authority referred to in paragraph (5) with recommendations on issues that may affect competition in the railway market; and
- (b) that safety authority to provide the Office of Rail Regulation with recommendations on issues which may affect safety.

(7) Without prejudice to their independence within the field of their competence, the Office of Rail Regulation and the safety authority referred to in paragraph (5) must each examine any relevant recommendation which it receives under paragraph (6) (a) or (b), as the case may be, before adopting a relevant decision or direction and shall give reasons if it deviates from the recommendation.

(8) The Office of Rail Regulation must regularly, and in any case at least every two years, consult representatives of users of the rail freight and passenger transport services, to take into account their views on the rail market.

(9) The Secretary of State must, while respecting the role of social partners, supply to the European Commission on an annual basis necessary information on the use of the networks and evolution of framework conditions in the rail sector.

(10) Information under paragraph (8) shall conform with any provisions to ensure consistency in the reporting obligations contained in Commission Decision []^(b).

Audits

36.—(1) The Office of Rail Regulation may carry out an audit or initiate an external audit of an infrastructure manager, service provider and, where relevant, railway undertaking to verify compliance with the accounting separation provisions laid down in regulation 9.

(2) In relation to its power under paragraph (1), the power of the Office of Rail Regulation under regulation 37 to request relevant information to perform its functions includes a power to request any relevant party to provide all or part of the accounting information listed in Schedule 5 with a sufficient level of detail as is deemed necessary and proportionate.

(3) For the purposes of paragraph (2) “any relevant party” includes an infrastructure manager, service provider, railway undertaking or other entity performing or integrating different types of rail transport or infrastructure management as referred to in regulations 9 and 6.

(4) The Office of Rail Regulation may draw conclusions from the accounts concerning state aid issues.

Provision of information to the regulatory body

37.—(1) The Office of Rail Regulation may request information in connection with its functions under regulations 13, 15(1), 16, 18(3), 20(1) and (8), 22(15), 29(6), 32, 33, 34, 35 and 36 and the provisions of section 80 of the Act (duty of certain persons to furnish information on request) shall apply for such purposes as if—

- (a) in subsection (1)—
 - (i) for “Licence holders” there were substituted “An infrastructure manager, allocation body, charging body, applicant, service provider or any other party”;
 - (ii) for “he, they or it” in both places there were substituted “it”; and

(a) S. I. 2011/3066, to which amendments have been made which are not relevant to these Regulations.

(b) [...]

- (iii) for “functions of the Secretary of State, the Scottish Ministers or (as the case may be) that Office under this Part, the Transport Act 2000 or the Railways Act 2005 or any other function or activity of his, theirs or its in relation to railway services.” there were substituted “of its functions under the [Railways Infrastructure (Access and Management) Regulations 2015].”;
 - (b) after subsection (1A) there were added—
 - “(1B) In subsection (1) “allocation body”, “charging body”, “applicant”, “infrastructure manager” and “service provider” have the same meanings as in the Railways (Access and Management) Regulations 2015.”; and
 - (c) in subsection (2)-
 - (i) for “28 days” there shall be substituted “one calendar month”; and
 - (ii) at the end of that subsection there shall be added:
 - “save that, in exceptional circumstances, the Office of Rail Regulation may authorise a time extension of a further two weeks for compliance with the request.”; and
 - (d) for “Secretary of State, the Scottish Ministers or the Office of Rail Regulation” in each place there were substituted “the Office of Rail Regulation”.
- (2) Information which may be requested under paragraph (1) includes data which are necessary for statistical and market observation purposes.

Cooperation between regulatory bodies

- 38.—**(1) This regulation is without prejudice to Article 3 of the IGC regulation.
- (2) The Office of Rail Regulation must exchange information about its work, decision making principles, and practice with the national regulatory bodies of other Member States, and in particular it must exchange information on the main issues of its procedures and on the problems of interpreting transposed European Union railway law.
- (3) The Office of Rail Regulation must cooperate with such bodies for the purpose of coordinating their decision-making across the European Union, and for this purpose it must participate and work together with them in a network that convenes at regular intervals.
- (4) The Office of Rail Regulation must cooperate closely with such bodies, including through working arrangements, for the purpose of mutual assistance in their market monitoring tasks and handling appeals or investigations.
- (5) In the case of an appeal or an own-initiative investigation on issues of access or charging relating to an international train path, as well as in the framework of monitoring competition on the market related to international rail transport services, the Office of Rail Regulation must consult the national regulatory bodies of all other Member States through which the train path concerned runs and, where appropriate, the European Commission, and must request all necessary information from them before taking its decision.
- (6) The Office of Rail Regulation must use any information it receives pursuant to paragraph (5) only for the purpose of handling the appeal or investigation.
- (7) If the Office of Rail Regulation receives a request for information from the regulatory body of another Member State in relation to an appeal or investigation of a type described under paragraph (5) for which such body is responsible, it must use its best endeavours to provide all such information that it has the right to request without delay.
- (8) If the Office of Rail Regulation receives an appeal, or conducts an investigation on its own initiative in relation to an issue for which another regulatory body is responsible, it must transfer relevant information to that regulatory body in order for that body to take measures regarding the parties concerned.
- (9) The duty to provide information under paragraph (7) also applies where the request to the Office of Rail Regulation relates to information which is held by an associated representative of an infrastructure manager, as referred to in regulation 21(4). The Office of Rail Regulation may

transfer such information regarding the international train path concerned to the regulatory bodies referred to in paragraph (4).

(10) The Office of Rail Regulation must work with the regulatory bodies of other Member States to develop common principles and practices for making the decisions for which they are empowered under these Regulations.

(11) The Office of Rail Regulation must review decisions and practices of associated infrastructure managers referred to in paragraph (8), which must comply with provisions in these Regulations, or which otherwise facilitate international rail transport.

PART 7

Amendment of the Railway (Licensing of Railway Undertakings) Regulations 2005

39.—(1) The Railway (Licensing of Railway Undertakings) Regulations 2005(a) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) insert ““the 2012 Directive” means Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(b);”;

(b) after the definition of “ORR” insert the following definition—

““railway undertaking” means any public or private undertaking, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking ensure traction; this includes undertakings which provide traction only;”;

(c) in paragraph (2) for “the 1995 Directive” substitute “the 2012 Directive”.

(3) Except in regulation 2, after the words “the 1995 Directive” wherever they occur insert “or the 2012 Directive”.

(4) In regulation 4(2) (scope) in sub-paragraph(c), omit the words “that are not covered by the scope of Council Directive 91/440/EEC dated 29 July 1991 on the development of the Community’s railways”.

(5) In regulation 6 (appointment of licensing authority and grant of European licences)—

(a) [after paragraph (4) insert-

“(4A) In the exercise of its functions under these Regulation, the ORR shall comply with Commission Decision [] regarding the use of a common template and, if needed to ensure fair and efficient competition in rail transport markets, details on the procedure to be followed for the application of Article 17 of the 2012 Directive.”]

(b) in paragraph (11) insert “without delay” after “The ORR shall”.

(6) In regulation 8 (monitoring, suspension and revocation of European licences)—

(a) for the wording in paragraph (2) substitute—

“The ORR may take such steps as are necessary to enable it to determine whether or not a railway undertaking complies with a requirement referred to in Schedule 2—

(a) at regular intervals of at least every 5 years, and

(b) at any time the ORR considers that there is serious doubt whether the railway undertaking complies with the requirement.”;

(b) in paragraph (14), for “the European Commission”, substitute “the European Railway Agency”.

(a) S.I. 2005/3050.

(b) O.J. No. L 343, 14.12.12, p. 32.

(7) In Schedule 2—

- (a) after paragraph (7)(e) insert “(f) taxes and social security contributions.”;
- (b) in paragraph (8) for “substantial” substitute “considerable or recurrent”; and
- (c) after paragraph 11(1) add-

“(1A) In determining whether adequate insurance cover is maintained, the ORR, may take into account the specificities and risk-profile of different types of services, in particular of railway operations for cultural or heritage purposes.”

PART 8

Miscellaneous

Statutory authority to run trains

40. Any applicant granted access 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.

Civil proceedings

41.—(1) Any obligation which a person owes under or arising from—

- (a) regulation 5;
- (b) regulation 6;
- (c) regulation 8;
- (d) regulation 9;
- (e) regulation 10;
- (f) paragraphs (2)(a), (5)(b) (9), and (13) of regulation 15;
- (g) paragraph (5) of regulation 16;
- (h) paragraph (5), (15) and (16)(c) of regulation 20;
- (i) paragraphs (4), (5), and (6) of regulation 22;
- (j) paragraph (5) of regulation 32;
- (k) paragraph (11) of regulation 33;
- (l) paragraph (12) of regulation 34, [or
- (m) paragraph (4) of regulation 35]

shall be a duty owed to any person who may be affected by a breach of that obligation 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 infrastructure manager, railway undertaking, allocation body, charging body or applicant under paragraph (1), it shall be a 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 Office of Rail Regulation for an injunction or for interdict or any other relief.

Making of false statements etc.

42.—(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, or recklessly makes any statement which is 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

43.—(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, that person 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 the member 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, that partner as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Restriction on disclosure of information

44. Section 145 of the Act (restriction on disclosure of information) 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

45.—(1) For the purpose of determining whether a breach of the duty imposed by regulation 9 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 is a British subject; or
- (c) a British protected person (within the meaning of that Act).

The Utilities Contracts Regulations 2006

46. The provisions of these Regulations are without prejudice to those of the Utilities Contracts Regulations 2006(a).

Signatory text

Date

Name
Parliamentary Under Secretary of State
Department

SCHEDULE 1

Amendments

PART 1

Regulation 2(2)

Amendments of Primary Legislation

The Railway Fires Act 1905

1.

In section 4 of the Railway Fires Act 1905(b) (definitions and application), in paragraph (c) of the definition of “railway company”—

- (a) after “for the purpose of implementing” add “(i)”; and
- (b) after “of the Council” add “;or (ii) Chapter III of Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(c);”.

The Insolvency Act 1986

2.

In Schedule 2A to the Insolvency Act 1986(d) (exceptions to prohibition on appointment of administrative receiver: supplementary provisions) in paragraph 10(1)(n)(e)—

- (a) after “for the purpose of implementing” add “(i)”; and
- (b) after “of the Council” add “;or (ii) Chapter III of Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(f);”.

(a) S.I. 2006/6
(b) 1905 c.11; the definition of “railway company” in section 4 was inserted in relation to England, Scotland and Wales by the 1993 Act, Schedule 12, paragraph 2(2).
(c) O.J. No. L 343, 14.12. 12, p. 32.
(d) 1986 c.45; Schedule 2A was inserted by the Enterprise Act 2002 (c.40) section 250(2), Schedule 18; paragraph 10 (1)(n) was inserted by S.I. 2005/3050, regulation 3 Schedule 1, Part 1;
(e) paragraph 10 (1)(n) of Schedule 2A was inserted by SI 2005/30/50, regulation 3 Schedule 1, Part 1; [paragraph 10(2A) of Schedule 2A was inserted by the Communications Act 2003 (c.21), Schedule 17, paragraph 82, and paragraph 10(2B) of that Schedule was inserted by S.I.2005/3050, regulation 3, Schedule 1, Part 1, paragraph 2(c)]
(f) O.J. No. L 343, 14.12. 12, p. 32.

The Railways Act 1993

3.

(1) The Act(a) shall be amended in accordance with the following provisions of this paragraph.

(2) In section 6(2)(b) (prohibition on unauthorised operators of railway assets), in the definition of “European Licence”—

(a) after “for the purpose of implementing” add “(i)”; and

(b) after “of the Council” add “;or (ii) Chapter III of Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(c).”.

(3) In section 80(1A) (duty of certain persons to furnish information to the Secretary of State, the Scottish Ministers or the Office of Rail Regulation on request)(d) for “Council Directive 95/18/EC dated 19th June 1995 on the licensing of railway undertakings, as amended by Directive 2001/13/EC dated 26th February 2001 and Directive 2004/49/EC dated 29th April 2004, both of the European Parliament and of the Council” substitute “Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(e).”.

(4) For sub-paragraphs (ga) and (gb) of section 145(2) (general restrictions on disclosure of information) substitute “(g) for the purpose of facilitating the carrying out by the Office of Rail Regulation of any of its functions under any instrument made for the purpose of implementing Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(f).”.

The Greater London Authority Act 1999

4.

For paragraph (b) of section 235(2) of The Greater London Authority Act 1999(g) (restrictions on disclosure of information) substitute-

“(b) for the purpose of facilitating the carrying out by the Secretary of State, the Office of Rail Regulation, the Competition and Markets Authority or the Mayor of any of his or, as the case may be, its functions under the Railways Act 1993, the Railways Act 2005 or any subordinate legislation made for the purpose of implementing Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(h).”.

The Civil Contingencies Act 2004

5.

(1) The Civil Contingencies Act 2004(i) shall be amended in accordance with the following provisions of this paragraph.

(2) In Schedule 1 (category 1 and 2 responders), in paragraph 24(1)(a)—

(a) after “for the purposes of implementing” add “(i)”; and

(a) 1993 c.43.

(b) definition “European Licence” substituted for definition of “international licence” as inserted by S.I. 1998/1340, regulation 21(3), by S.I. 2005/3050, regulation 3, Schedule 1, Part 1, paragraph 3(1), (3)(a) .

(c) O.J. No. L 343, 14.12. 12, p. 32.

(d) Section 80 was amended by the Transport Act 2000, Schedule 27, paragraphs 17 and 38, and Schedule 31, Part 4; and the Railways Act 2005, Schedule 1, paragraph 33.

(e) O.J. No. L 343, 14.12. 12, p. 32.

(f) O.J. No. L 343, 14.12. 12, p. 32.

(g) 1999 c.29 [amendments]

(h) O.J. No. L 343, 14.12. 12, p. 32.

(i) 2004 c.36. paragraph 24 to Schedule 1 was substituted by S.I. 2005/3050, regulation 3 Schedule 1, Part 1, paragraph 4(a); paragraph 35 to that Schedule was substituted by S.I. 2005/3050 regulation 3 Schedule 1, Part 1, paragraph 4(b) there are other amending instruments but none is relevant.

- (b) after “of the Council” add “, or (ii) Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(a).”.
- (3) In Schedule 1 (category 1 and 2 responders), paragraph 35(1)(a)—
- (a) after “for the purpose of implementing” add “(i)”; and
 - (b) after “of the Council” add “, or (ii) Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(b).”.

PART 2

Amendments to Secondary Legislation

The Town and Country Planning (Control of Advertising) Regulations 1992

6.

In the Town and Country Planning (Control of Advertising) Regulations 1992(c), regulation 2(1) (interpretation), in the definition of “statutory undertaker”—

- (a) after “purpose of implementing” add “(i)”; and
- (b) after “of the Council;” add “or (ii) Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(d).”.

The London Underground (East London Line Extension) (No. 2) Order 2001

7.

In the London Underground (East London Line Extension) (No. 2) Order 2001(e), in paragraph 1(2) of Schedule 11 (protection for Railtrack), in the definition of “train operator”—

- (a) after “for the purpose of implementing” add “(i)”, and
- (b) at the end of this definition add “, or (ii) Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(f).”.

The Docklands Light Railway (Silvertown and London City Airport Extension) Order 2002

8.

In the Docklands Light Railway (Silvertown and London City Airport Extension) Order 2002(g), in paragraph 13(6) of Schedule 11 (protection of railway undertakers), in the definition of “train operator”—

- (a) after “for the purpose of implementing” add “(i)”, and
- (b) at the end of this definition add “, or (ii) Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(a).”.

(a) O.J. No. L 343, 14.12. 12, p. 32.
 (b) O.J. No. L 343, 14.12. 12, p. 32.
 (c) S.I. 1992/666; **revoked in relation to England**, by S.I. 2007/783, amended by S.I. 2005/3050, regulation 3 Schedule 1, Part 2, paragraph 7(1) and (3). There are other amendments but none is relevant.
 (d) O.J. No. L 343, 14.12. 12, p. 32.
 (e) S.I. 2001/3682 amended by S.I. 2005/3050, regulation 3 Schedule 1, Part 2, paragraphs 9(1), and (2)(b). There are other amendments but none is relevant.
 (f) O.J. No. L 343, 14.12. 12, p. 32.
 (g) S.I. 2002/1066., to which there are amendments not relevant to these Regulations.

The Docklands Light Railway (Woolwich Arsenal Extension) Order 2004

9.

In the Docklands Light Railway (Woolwich Arsenal Extension) Order 2004(b), in paragraph 15(6) of Schedule 13 (protection of railway interests) in the definition of “train operator”—

- (a) after “for the purpose of implementing” add “(i)”, and
- (b) at the end of this definition add “, or (ii) Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(c).”.

The British Transport Police (Police Services Agreement) Order 2004

10.

In the British Transport Police (Police Services Agreement) Order 2004(d) in article 2(1)(b)—

- (a) after “for the purpose of implementing” add “(i)”, and
- (b) after “of the Council” add “, or (ii) Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(e).”.

The Central Rating List (England) Regulations 2005

11.

(1) In the Central Rating List (England) Regulations 2005(f) in regulation 6(4)(d), in the definition of “licence exempt operator”—

- (a) after “for the purpose of implementing” add “(i)”, and
- (b) at the end of this definition add “, or (ii) Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(g).”.

The Central Rating List (Wales) Regulations 2005

12.

In the Central Rating List (Wales) Regulations 2005(h) in regulation 7(3), in the definition of “licence exempt operator”—

- (a) after “for the purpose of implementing” add “(i)”, and
- (b) at the end of this definition add “, or (ii) Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(i).”.

The Railways (Interoperability) Regulations 2011

13.

(1) In the Railways (Interoperability) Regulations 2011(j), in regulation 36(10)(b)(i) (national vehicle register) for the words “article 30 of Directive 2001/14/EC of the European Parliament and

(a) O.J. No. L 343, 14.12. 12, p. 32.

(b) S.I. 2004/757, amended by S.I. 2005/3050

(c) O.J. No. L 343, 14.12. 12, p. 32.

(d) S.I. 2004/1522 amended by S.I. 2005/3050

(e) O.J. No. L 343, 14.12. 12, p. 32.

(f) S.I. 2005/551, amended by S.I. 2005/3050

(g) O.J. No. L 343, 14.12. 12, p. 32.

(h) S.I. 2005/422, amended by S.I. 2005/3050

(i) O.J. No. L 343, 14.12. 12, p. 32.

(j) S.I. 2011/3066 to which amendments have been made which are not relevant to these Regulations.

of the Council of 26th February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification” substitute “article 55 of Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(a);”.

SCHEDULE 2

regulations 5, 6 and 10

Services to be supplied to applicants

1. The minimum access package referred to in regulation 6(1) shall comprise—
 - (a) handling of requests for infrastructure capacity; and
 - (b) the right to utilise such capacity as is granted and, in particular—
 - (i) such running track points and junctions as are necessary to utilise that capacity;
 - (ii) electrical supply equipment for traction current, where available and as is necessary to utilise that capacity;
 - (iii) train control, including signalling, train regulation, dispatching and the communication and provision of information on train movements; and
 - (iv) all other information as is necessary to implement or to operate the service for which capacity has been granted.
2. Track access to services facilities and the supply of services referred to in regulations 5(1) and 6(1), (3), (4), (7) and (9) and 10(1) and (2) shall comprise—
 - (a) refuelling facilities, and supply of fuel in these facilities, charges for which shall be shown on the invoices separately;
 - (b) passenger stations, including buildings and other facilities such as travel information display facilities and suitable location for ticketing services;
 - (c) freight terminals;
 - (d) marshalling yards;
 - (e) train formation facilities including shunting facilities;
 - (f) storage sidings;
 - (g) maintenance facilities with the exception of heavy maintenance facilities dedicated to high-speed trains or to other types of rolling stock requiring specific facilities;
 - (h) other technical facilities including cleaning and washing facilities;
 - (i) maritime and inland port facilities which are linked to rail activities; and
 - (j) relief facilities;
3. The additional services referred to in regulation 6(11) may comprise—
 - (a) traction current, charges for which shall be shown on the invoices separately from charges for using the electrical supply equipment, without prejudice to the application of Directive 2009/72/EC of the European Parliament and of the Council of 13th July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC(b);
 - (b) pre-heating of passenger trains;
 - (c) the supply of fuel;
 - (d) tailor-made contracts for—

(a) O.J. No. L 343, 14.12. 12, p. 32.

(b) O.J. L 211, 14.8.2009, p. 55.

- (i) control of the transport of dangerous goods; and
- (ii) assistance in running abnormal trains.

4. The ancillary services referred to in regulation 6(12) may comprise—

- (a) access to the telecommunication network;
- (b) the provision of supplementary information;
- (c) technical inspection of rolling stock;
- (d) ticketing services in passenger stations ; and
- (e) heavy maintenance services supplied in maintenance facilities dedicated to high-speed trains or to other types of rolling stock requiring specific facilities.

SCHEDULE 3

regulations 15 and 17

Access charging

Principles of access charging

1.

(1) The infrastructure manager must ensure that the application of the charging scheme—

- (a) complies with the rules set out in the network statement produced in accordance with regulation 14; and
- (b) results in equivalent and non-discriminatory charges for different railway undertakings that perform services of an equivalent nature in a similar part of the market.

(2) The calculation of the fee may in particular take into account the mileage, composition of the train and any specific requirements in terms of such factors as speed, axle load and the degree or period of utilisation of the infrastructure.

(3) Except where specific arrangements are made in accordance with paragraph 3, the infrastructure manager must ensure that the charging system in use is based on the same principles over the whole of his network.

(4) Without prejudice to sub-paragraph (8) the charges for the minimum access package and track access to service facilities referred to in paragraphs 1 and 2 of Schedule 2 shall be set at the cost that is directly incurred as a result of operating the train service.

(5) From [date 4 years after the in force date of the Cion decision referred to in article 31(3) of the Directive] or earlier, the infrastructure manager shall calculate of the cost under sub-paragraph (4), or, as the case may be, under the first paragraph of Article 4 of the Channel Tunnel charging framework, in accordance with Commission Decision [](a).

(6) The charge imposed for track access within service facilities referred to in paragraph 2 of Schedule 2 and the supply of services in such service facilities shall not exceed the cost of providing it, plus a reasonable profit.

(7) If the additional or ancillary services referred to in paragraphs 3 and 4 of Schedule 2 are offered by only one supplier the charge imposed for the supply of those services must not exceed to the cost of providing the service, plus a reasonable profit.

(8) The infrastructure charge may include a charge to reflect the scarcity of capacity of the identifiable segment of the infrastructure during periods of congestion.

(a) [...]

(9) The charges referred to in sub-paragraphs (4) and (8) may be averaged over a reasonable spread of train services and times, but the relative magnitudes of the infrastructure charges must be related to the costs attributable to the services.

Exceptions to the charging principles

2.

(1) In order to obtain full recovery of the costs incurred the infrastructure manager, with the approval of the applicable authority, may levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, whilst guaranteeing optimum competitiveness, in particular in respect of rail market segments.

(2) For the purposes of this paragraph, the applicable authority is—

- (a) in relation to infrastructure subject to the access charges review, the Office of Rail Regulation;
- (b) in relation to a rail link facility, the Secretary of State; and
- (c) in relation to infrastructure that is part of the tunnel system, the Office of Rail Regulation.

(3) For the purposes of this paragraph—

- (a) approval given by the Office of Regulation in relation to infrastructure subject to the access charges review must be given under that review; and
- (b) approval given by the Secretary of State in relation to a rail link facility must be given through the development agreement.

(4) The charging system shall respect the productivity increases achieved by applicants.

(5) Before approving the levy of a mark-up under sub-paragraph (1) the Office of Rail Regulation or the Secretary of State, as the case requires, shall ensure that the infrastructure manager evaluates its relevance for the specific market segments, considering at least the pairs listed in sub-paragraph (10) and retaining the relevant ones.

(6) The list of market segments considered by the infrastructure manager under sub-paragraph (5) shall contain at least the three following segments: freight services, passenger services within the framework of a public service contract and other passenger services.

(7) In addition to the market segments considered by the infrastructure manager under sub-paragraph (5), the infrastructure manager may consider further market segments according to commodity or passengers transported.

(8) Market segments in which railway undertakings are not currently operating but in which they may provide services during the period of validity of the charging system must also be defined. The infrastructure manager must not include a mark-up in the charging system for those market segments.

(9) The list of market segments shall be published in the network statement and must be reviewed at least every five years. The Office of Rail Regulation shall control that list in accordance with paragraph (2) of regulation 33.

(10) The pairs referred to in sub-paragraph (5) are as follows:

- (a) passenger versus freight services,
- (b) trains carrying dangerous goods versus other freight trains,
- (c) domestic versus international services,
- (d) combined transport versus direct trains,
- (e) urban or regional versus interurban passenger services,
- (f) block trains versus single wagon load trains,
- (g) regular versus occasional train services.

3.

(1) Subject to sub-paragraph (2), for specific investment projects completed—

- (a) since 15th March 1988; or
- (b) following the coming into force of these Regulations,

the infrastructure manager may set or continue to set higher charges on the basis of the long-term costs of the project.

(2) For sub-paragraph (1) to apply—

- (a) the project must increase efficiency or cost-effectiveness; and
- (b) the project must be one that could not otherwise have been undertaken without the prospect of such higher charges.

(3) A charging arrangement to which sub-paragraph (1) applies may incorporate agreements on the sharing of the risk associated with new investments.

4.

(1) An infrastructure manager's average and marginal charges for equivalent uses of his infrastructure must be comparable and comparable services in the same market segment must be subject to the same charges.

(2) The network statement produced by the infrastructure manager in accordance with regulation 14 must demonstrate that the charging system meets the requirements in sub-paragraph (1) in so far as this can be done without the disclosure of commercially confidential information.

5.

If an infrastructure manager intends to modify the essential elements of the charging system referred to in paragraph 2 that infrastructure manager must make such modifications public at least three months in advance of the deadline for the publication of the network statement under regulation 14.

Discounts

6.

(1) Subject to the provisions of articles 101, 102, 106 and 107 of the Treaty, and notwithstanding paragraph 1(4) of this Schedule, any discount on the charges levied on a user of railway infrastructure by the infrastructure manager, for any service, must comply with the principles set out in this paragraph.

(2) Except where sub-paragraph (3) applies, discounts shall be limited to the actual saving of the administrative cost to the infrastructure manager and, in determining the level of discount to be applied, no account may be taken of cost savings already incorporated in the charge levied.

(3) The infrastructure manager may introduce schemes available to all users of the infrastructure, with reference to specified traffic flows, granting time limited discounts to encourage the development of new rail services, or discounts encouraging the use of considerably under-utilised lines.

(4) The discounts available must be in accordance with the access charges review or, in the case of a rail link facility, the development agreement.

(5) Discounts may relate only to charges levied for a specified infrastructure section.

(6) Similar discount schemes must be applied to similar services.

(7) Discount schemes must be applied in a non-discriminatory manner to any railway undertaking.

Performance Schemes

7.

(1) The basic principles referred to in regulation 17 are listed in the sub-paragraphs of this paragraph.

(2) In order to achieve an agreed level of performance and not to endanger the economic viability of a service, the infrastructure manager must agree with applicants the main parameters of the performance scheme, in particular the value of delays, the thresholds for payments due under the performance scheme relative both to individual train runs and to all train runs of a railway undertaking in a given period of time.

(3) The infrastructure manager must communicate to the railway undertakings the working timetable, on the basis of which delays will be calculated, at least five days before the train run. The infrastructure manager may apply a shorter notice period in case of force majeure or late alterations of the working timetable.

(4) All delays must be attributable to one of the following delay classes and sub-classes—

(a) operation/planning management attributable to the infrastructure manager—

- (i) timetable compilation,
- (ii) formation of train,
- (iii) mistakes in operations procedure,
- (iv) wrong application of priority rules,
- (v) staff,
- (vi) other causes;

(b) infrastructure installations attributable to the infrastructure manager—

- (i) signalling installations,
- (ii) signalling installations at level crossings,
- (iii) telecommunications installations,
- (iv) power supply equipment,
- (v) track,
- (vi) structures,
- (vii) staff,
- (viii) other causes;

(c) civil engineering causes attributable to the infrastructure manager—

- (i) planned construction work,
- (ii) irregularities in execution of construction work,
- (iii) speed restriction due to defective track,
- (iv) other causes;

(d) causes attributable to other infrastructure managers—

- (i) caused by previous infrastructure manager,
- (ii) caused by next infrastructure manager,

(e) commercial causes attributable to the railway undertaking,

- (i) exceeding the stop time,
- (ii) request of the railway undertaking,
- (iii) loading operations,
- (iv) loading irregularities,
- (v) commercial preparation of train,
- (vi) staff,
- (vii) other causes;

(f) rolling stock attributable to the railway undertaking—

- (i) roster planning/re-rostering,
- (ii) formation of train by railway undertaking,

- (iii) problems affecting coaches (passenger transport),
- (iv) problems affecting wagons (freight transport),
- (v) problems affecting cars, locomotives and rail cars,
- (vi) staff,
- (vii) other causes;
- (g) causes attributable to other railway undertakings—
 - (i) caused by next railway undertaking,
 - (ii) caused by previous railway undertaking;
- (h) external causes attributable to neither infrastructure manager nor railway undertaking—
 - (i) strike,
 - (ii) administrative formalities,
 - (iii) outside influence,
 - (iv) effects of weather and natural causes,
 - (v) delay due to external reasons on the next network,
 - (vi) other causes; and
- (i) secondary causes attributable to neither infrastructure manager nor railway undertaking—
 - (i) dangerous incidents, accidents and hazards,
 - (ii) track occupation caused by the lateness of the same train,
 - (iii) track occupation caused by the lateness of another train,
 - (iv) turn-around,
 - (v) connection,
 - (vi) further investigation needed.

(5) Wherever possible, delays must be attributed to a single organisation, considering both the responsibility for causing the disruption and the ability to re-establish normal traffic conditions.

(6) The calculation of payments must take into account the average delay of train services of similar punctuality requirements.

SCHEDULE 4

regulations 20 and 23

Timetable for the Allocation Process

Date of timetable change

1.

(1) Subject to sub-paragraph (2), (3) and (4) the working timetable must be established once per calendar year, and the change of working timetable must take place at midnight on the second Saturday in December.

(2) Where a change or adjustment to the working timetable is carried out after the winter, in particular to take account, where appropriate, of changes in regional passenger traffic timetables, it must take place at midnight on the second Saturday in June.

(3) Further changes to the working timetable may be made at such other intervals as are required.

(4) The infrastructure manager may agree different dates to those stipulated in sub-paragraphs (1) and (2) and, in this case, must inform the European Commission if international traffic may be affected.

Timetable for the production of the working timetable

2.

(1) The final date for receipt of requests for capacity to be incorporated into the working timetable shall be no more than 12 months in advance of the entry into force of the working timetable described in paragraph 1.

(2) No later than 11 months before the working timetable comes into force, the infrastructure managers must ensure that provisional international train paths have been established in co-operation with other relevant infrastructure managers or, as the case may be, allocation bodies, in accordance with regulation 20.

(3) Infrastructure managers must ensure that, so far as possible, provisional international train paths established in accordance with sub-paragraph (2) are adhered to during the subsequent allocation process.

(4) No later than four months after the deadline for submission of bids by applicants, the infrastructure manager must prepare a draft working timetable.

SCHEDULE 5

regulation 36(2)

Accounting information to be supplied to the Office of Rail Regulation upon request

1. The accounting information which must be supplied to the Office of Rail Regulation under regulation 36(2) includes the information listed at paragraphs 2, 3 and 4.

Account separation

2.

- (a) separate profit and loss accounts and balance sheets for freight, passenger and infrastructure management activities;
- (b) detailed information on individual sources and uses of public funds and other forms of compensation in a transparent and detailed manner, including a detailed review of the businesses' cash flows in order to determine in what way these public funds and other forms of compensation have been used;
- (c) cost and profit categories making it possible to determine whether cross-subsidies between these different activities occurred, according to the requirements of the Office of Rail Regulation;
- (d) methodology used to allocate costs between different activities; and
- (e) where the regulated firm is part of a group structure, full details of inter-company payments.

Monitoring of track access charges

3.

- (a) different cost categories, in particular providing sufficient information on marginal/direct costs of the different services or groups of services so that infrastructure charges can be monitored;
- (b) sufficient information to allow monitoring of the individual charges paid for services (or groups of services); and if required by the Office of Rail Regulation, this information shall contain data on volumes of individual services, prices for individual services and total revenues for individual services paid by internal and external customers; and

- (c) costs and revenues for individual services (or groups of services) using the relevant cost methodology, as required by the regulatory body, to identify potentially anti-competitive pricing (cross-subsidies, predatory pricing and excessive pricing).

Indication of financial performance

4.

- (a) a statement of financial performance;
- (b) a summary expenditure statement;
- (c) a maintenance expenditure statement;
- (d) an operating expenditure statement;
- (e) an income statement; and
- (f) supporting notes that amplify and explain the statements, where appropriate.

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 21st November 2012, establishing a single European railway area (recast) (O.J. No. L 343, 14.12. 12, p. 32.) (“the Directive”). The Directive repeals three key EU measures: (1) Council Directive 91/440/EEC of 29th July 1991 on the development of the Community’s railways (O.J. No. L 237, 24/8/1991, p.25); (2) Council Directive 95/18/EC of 19th June 1995 on the licensing of railway undertakings (O.J. No. L143, 27/06/1995, p70); and (3) Directive 2001/14/EC of the European Parliament and of the Council of 26th 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. L 75, 5/03/2001, p29), together with various directives amending these, and consolidates these provisions in one place. The Directive also makes some substantive changes to the consolidated legal obligations, although most of these remain unchanged.

The repealed EU measures were previously implemented in Great Britain by the Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049) (amended by S.I. 2009/1122) [and the Railways Infrastructure (Access and Management) (Amendment) Regulations 2015 (S.I. 2015/)] (“the Access and Management Regulations”), the Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050) (“the Licensing Regulations”); and for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 2005 (S.I. 2005/3207) (later amended by S.I. 2008/2366 and 2009/2081, now revoked by [the Channel Tunnel (International Arrangements) (Charging Framework and Transfer of Economic Regulation Functions) Order 2015]). These Regulations implement the substantive changes to legal requirements required by the Directive by revoking and re-enacting the Access and Management Regulations with amendments, and by amending the Licensing Regulations. These Regulations do not apply to Northern Ireland.

Part 1 contains preliminary provisions. *Regulation 2 revokes the Access and Management Regulations and provides for consequential amendments set out in Schedule 1. Regulation 4(scope) has been restructured for clarity but substantive*

changes are minimal and include provisions to apply when a railway undertaking is under the direct or indirect control of an entity performing or integrating rail transport services other than urban, suburban or regional services. Regulation 4 also excludes Channel Tunnel Shuttle services from most provisions of these Regulations. The Channel Tunnel is otherwise within the scope of these Regulations.

Part 2, as before, grants access and transit rights to international passenger services and freight operators to the entire rail network in Great Britain, including access to terminals and ports linked to the rail network, and access to, and the supply of, the services listed in Schedule 2 to the Regulations. The list of services in Schedule 2 has been expanded and clarified by the Directive, and rights of access to infrastructure specifically now includes access to infrastructure connecting service facilities. *Regulation 6* imposes new obligations as to the rights to the supply of services, and when requests for these can be refused. *Regulation 7* includes a new provision ensuring that cross border agreements do not discriminate between railway undertakings or restrict their freedom to operate cross-border services.

Part 3, as before, imposes 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 undertakings. *Regulation 11* now requires the Secretary of State to set up mechanisms to reduce indebtedness of publicly owned or controlled railway undertakings. *Regulation 12* now provides for the publication of an indicative railway infrastructure strategy. *Regulation 13* requires the drawing up of a business plan by infrastructure managers, and applicants must now have the opportunity to comment on a draft of this. Railway undertakings must also draw up a business plan. Infrastructure managers are still placed under a requirement to produce a network statement containing the information now set out in *regulation 14*, although the detail of this content 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, together with Schedule 3 and the Channel Tunnel charging framework (set out in schedule to the Channel Tunnel (International Arrangements) (Charging Framework and Transfer of Economic Regulation Functions) Order 2015), sets out the structure for the charging of fees for the use of railway infrastructure, and the charging principles. *Regulation 15* now requires that service providers, too, must charge fees which must be used to fund their business. *Regulation 17* contains further provisions as to the calculation of payments under performance schemes, and allows for a dispute resolution system in relation to these. *Regulation 18* permits a charge to be imposed for regular non-usage of allocated train paths. *Regulation 19* requires the infrastructure manager to cooperate with other infrastructure managers within the European Union to coordinate charging for services crossing more than one network. Schedule 3 sets out principles of access charging. Paragraph 1 of Schedule 3 now requires the calculation of the train operating costs to be calculated with reference to Commission Decision []; and that charges for the supply of such services shall not exceed the costs of providing them, plus a reasonable profit. Paragraph 2 of this Schedule now 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, together with Schedule 4, sets 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. *Regulation 20* now allows for the infrastructure manager to set requirements with regard to applicants to safeguard future revenues and utilisation of the infrastructure. [*Regulation 22* now requires infrastructure managers to observe Commission Decision [] regarding procedure and criteria for the application of this Regulation, which deals with framework agreements.] *Regulations 27 to 29* set out the procedure that must be followed where an element of the railway infrastructure is congested, and *regulation 30* provides a ‘use it or lose it’ provision in respect of allocated capacity.

Part 6 allocates certain regulatory functions to the Office of Rail Regulation (“ORR”). *Regulation 33* 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 requires the ORR to make a decision on such appeals within six weeks. *Regulation 35* requires the ORR to monitor competition in the rail services market and to take appropriate action to deal with undesirable developments in the market (including in relation to the matters listed in sub-paragraphs (a) to (g) of regulation 33(2)) either arising out of its own investigations, or from appeals which have been submitted. *Regulation 36* gives the ORR the power to audit various bodies, and makes clear that its power to request information under regulation 37 includes a power to request the information listed in *Schedule 5*. *Regulation 38* provides for cooperation between regulatory bodies.

Part 7 amends the Licensing Regulations to reflect amendments to the provisions which they implement, and also to update references to repealed EU legislation as necessary.

Schedule 1 contains consequential amendments to the Railways Act 1993 and other miscellaneous provisions.

A Regulatory Impact Assessment has been prepared and copies can be obtained from the Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR. A copy has been placed in the Library of each House of Parliament. A copy of the Transposition Note is also available from the Department for Transport. Copies of the Regulatory Impact Assessment and of the Transposition Note may also be accessed on the HMSO website www.opsi.gov.uk.

STATUTORY INSTRUMENTS

2015 No. 0000

TRANSPORT

The Railways Infrastructure (Access and Management) and
Railway (Licensing of Railway Undertakings) (Amendment)
Regulations 2015