

## Recast Directive Transposition table

### Notes

1. This relates to implementation of Directive 2012/34/EU of the European Parliament and of the Council, of 21st November 2012 in Great Britain (including the UK half of the Channel Tunnel). Since competence with regard to transport has been devolved to the Northern Ireland Assembly in respect of Northern Ireland, Northern Ireland will notify its implementation separately.
2. Unless otherwise stated, regulations cited are regulations of the draft Railways Infrastructure (Access and Management) and Railway (Licensing of Railway Undertakings) (Amendment) Regulations 2015.

	Objective	Implementation Regulation	Responsibility	Notes
<b>CHAPTER 1 - General Provisions</b>				
Articles 1 and 2				
To avoid confusion around change of drafting where there is no change of meaning, we have kept existing UK legislation wording and structure largely in place, adding wording where required to reflect changes in EU wording. In general wording departs only from EU wording to avoid unhelpful confusion. Structure has been adapted to try and make these extremely complex provisions more user friendly. Sense has not been changed. All possible derogations have been implemented.				
1(a)	Not new	4(1)	As applicable	Provisions applied to undertakings established in EEA member states are to fulfil obligations in reciprocal treaties. See para 37 onwards of annex XIII to EEA Agreement re rail transport ( <a href="http://www.efta.int/media/documents/legal-texts/eea/the-eea-agreement/Annexes%20to%20the%20Agreement/annex13a.pdf">http://www.efta.int/media/documents/legal-texts/eea/the-eea-agreement/Annexes%20to%20the%20Agreement/annex13a.pdf</a> ) and reference to interpretation of A7 of 91/440/EEC as being to EEA rather than EU.
1(b)	Not new	4 of the Railway (Licensing of Railway Undertakings) Regulations 2005 change implemented in 39(4)	As applicable	Licensing requirements in this chapter area also applied to undertakings established in EEA states as above
1(c)	Not new	4(4)	As applicable	As above, since meaning is the same, old drafting has been retained to avoid confusion.
1.2	Applies directive to the use of railway infrastructure for domestic and international rail services.	4(4)	As applicable	
2.1	Chapter II shall not apply to railway undertakings (RU) which only operate 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  Notwithstanding the above when a railway undertaking is under the control of an entity performing or integrating rail transport services other than urban, suburban or regional services Articles 4 (management independence) and 5 (railway undertakings to be managed according to commercial principles) must apply. Article 6 (separation of accounts) must apply to such a RU with regard to it and the entity which controls it.	4(2) and (3)	As applicable	

2.2	Not new Slight change to 2(c)	4 of the Railway (Licensing of Railway Undertakings) Regulations 2005  change implemented in 39(4)	As applicable	
2.3	Exclusions relating to Chapter IV, Articles 7, 8, 13 (mostly not new).	4(5) and (6)	As applicable	Structure has been improved to try and make this complex provision more intelligible, meaning has not changed.
2.4	Notwithstanding 2.3 Member States can, if the Commission agrees, exclude from application of Article 8(3) and Chapter IV certain non-strategically important infrastructures.	A decision has been taken not to make any such exclusions at present. In the event exclusion is required appropriate amendments will be made.	Secretary of State power	
2.5	Vehicles operated from and to third countries and running on a network whose track gauge is different from the main network within the Union can be excluded from Application of Article 31(5) (rules on noise differentiated track access charges).	Not applicable as GB is only joined to France, which has the same gauge.	Not applicable	
2.6	Member States may decide different deadlines from those required elsewhere in the directive if the establishment of international train paths with third countries has an impact.	Not applicable	Not applicable	
2.7	Measure relating to charging for intl. freight services to and from third countries with a different gauge.	Not applicable	Not applicable	
2.8	Option to exclude Chapter IV from application to infrastructure with different gauge connecting third countries.	Not applicable	Not applicable	
2.9	Exempts shuttle services for road vehicles through undersea tunnels and related transport operations from 6(1), 6(4) 10, 11, 12, 28.	4(7)	Not applicable	
2.10	Exclusion of transit service	Not applicable	Not applicable	
2.11	Member States may exclude from the application of Article 32 para 4 (different charges for access to infrastructure to incentivise the use of ETCS) trains not equipped with ETCS and used for regional passengers services which have been placed into service for the first time before 1985	Not applicable because Article 32 para 4 will not be implemented in the UK.	Not applicable .	

3	Definitions	Regulation 3.		The Directive's definitions are incorporated by reference. UK definitions have been added where necessary for the SI to fit into existing UK regulatory structure; to avoid wordy repetition of concepts in the text; or where the definition is vague enough to cause problems with interpretation.
<b>CHAPTER II - Development of the Railways</b>				
4.1	As regards management, administration and internal control over specified matters, railway undertakings directly or indirectly owned by Member States must be independent, with independent assets, budgets and accounts (mostly not new).	8(1)	Member States and railway undertakings	Article 4 in general - provisions are mostly unchanged, hence drafting from 2005 Regulations kept.
4.2	Not new	8(2)	Member States and railway undertakings	
5.1	Not new	No implementation required as UK law already allows for this.	Member States	
5.2	Not new	13(4),(5)	Railway undertakings	2005 regulations structure kept, as makes provisions clearer. Meaning the same.
5.3	Stipulating that Railway undertakings must be free to do certain things (e.g. establish their internal organisation)	No implementation required as UK law already allows for this.	Not applicable	
5.4	Shareholders of publically owned or controlled Railway undertakings shall be able to require their own prior approval for major business management decisions in the same way as shareholders of private joint-stock companies under domestic legislation. This is without prejudice to powers of supervisory bodies in relation to the appointment of board members.	Existing UK law allows for prior approval of this sort where it is required.	Not applicable	
6.1	Not new	9(1)	Infrastructure manager and railway undertakings	Article 6 - Most of Article 6 is captured in current regulation 9 of 2005 Regulations, which is set out more methodically. The wording and structure has been kept as the meaning is the same.
6.2	Not new	As before, the UK has chosen not to implement this option in relation to GB.	Not applicable	
6.3	Requirement for separate accounts for businesses relating to provision of rail freight and activities relating	9(2)	Railway undertakings	The same structure used for the implementation of (old) A6.1 is used for the implementation of (new) A6.3 for coherence.

	to provision of passenger transport services  Public funds paid for transport services as public sector remits to be shown separately in such accounts, in accordance with Art 7 Reg 1370/2007 and shall not be transferred.			
6.4	Accounts in A6.1 and A6.3 to be kept so as to allow monitoring of prohibition on transfer of public funds and the monitoring of the use of income from infrastructure charges and surpluses from other commercial activities.	9(3)	Railway undertakings and infrastructure managers	Some structuring added for better clarity and to fit in with the pre-existing style of regulation 9 of the 2005 Regulations.
7	New 7.3 - Where the provisions of sections 2 (infrastructure and service charges) and 3 (allocation of infrastructure capacity) of Chapter IV refer to the essential functions of an infrastructure manager they shall apply to the charging body of the allocation body.	15(9) and (10), and 20(3)	Infrastructure managers	The wording in the 2005 Regulations has been kept as this slotted the provisions into the appropriate themed section of the regulations, there are no substantive differences in meaning.

8.1	Member States to develop infrastructure taking into account needs of the Union.  Also new obligation to publish by 16 December 2014, after consultation, an indicative rail infrastructure development strategy with a view to meeting future mobility needs based on sustainable financing. The strategy is to be for at least 5 years and be renewable.	As part of the Periodic Review process, the Secretary of State for Transport and Scottish Ministers publish five year strategies for the development of railway infrastructure.	Secretary of State and Scottish Ministers	8.1 – new regulation 12 implements the publication of the strategy, obliging coordination with Scottish Ministers. Copy out would not have achieved this, A8.1 does not make it clear who must publish this document and how, nor does it coordinate the response of the English and Scottish administrations in respect of the territories.
8.2	Mostly not new. Option for Member States to provide infrastructure manager with financing consistent with functions referred to in Article 3(2), and other specified factors. Option to finance other than through state funding. Member States to comply with para (4) requirements.	No legislation needed to implement	Member States	
8.3	Obligation on infrastructure manager to publish a business plan (not new). New requirement for applicants to have access to information and comment before approval (new).	13(1), (2) and (3)	Infrastructure manager	New provision has been added at the appropriate place. Since there has been no change to other aspects of A8.3, existing drafting has been kept.

8.4	Member States shall ensure the profit and loss accounts of the infrastructure manager balance over a period not longer than 5 years. Non-refundable incomes from private sources to be taken into account (new) Option to require infrastructure manager's accounts to balance without state funding (not new).	16(1) Option in paragraph 2, as before, not implemented	ORR, Secretary of State	This existing provision, which included some restructuring for clarity, has been amended to implement the changes required. No substantive change in meaning between the directive and the implementing provision.
9.1	Obligation to set up mechanisms to reduce indebtedness of publically owned Railway undertakings if such debts incurred by the date of market opening for rail transport services or by 5 March 2001.	11	Secretary of State	
9.2	Member States may require a separate debt amortisation unit to be set up.	The UK has chosen not to implement.	Not applicable	
9.3	Relates to the application of 9.1 and 9.2.	Does not require implementation specifically.	Not applicable	
10.1	Conditions of access to the railway infrastructure for railway undertakings now also to be non-discriminatory and transparent and to include access to other specified infrastructure and services facilities referred to in point 2 of Annex II or potentially serving more than one final customer.	5(1) and Schedule 2 paragraph 2	Infrastructure manager and service providers	A10 in general - Same substantive wording largely used but restructured for succinctness. Provisions slotted in where logical to fit with the existing structure of the 2005 Regulations e.g. A10.3 and A10.4 set in context of ORR's duties.  10.1 - Existing UK regulation, which combines 10.1 and 10.2 more concisely has been amended to account for the change.
10.2	Access to railway infrastructure to operate international passenger services is also now to include access to infrastructure connecting service facilities listed in point 2 Annex II	5(1), (2) and (3)	Infrastructure manager and service providers	
10.3	Not new	34(1)	ORR	Wording slotted into appropriate regulation to fit in with 2005 Regulations structure.
10.4	The Commission shall adopt implementing acts setting out the details of the procedure and criteria to be followed for the application of 10.3. (in accordance with the examination procedure)	34(2)	ORR	Copy out not appropriate as has no legal effect.
11.1	Not new	5(3), (4) and (5) and 34	n/a	Article 11 in general - These provisions are mostly already dealt with in regulation 35 dealing with ORR decisions on international services. The original structure of these provisions is preserved in accordance with industry preference – i.e. re-ordered for clarity. Provisions have been added to make clear what the procedure is for

				redetermination, allowing for HS1 and enforcement.
11.2	Mostly not new Basis of determining if economic equilibrium would be compromised. New small amendment to procedure.	37 (information provision)  34(3), (4), (5) (6), (12)  34(5) and (6) amended to take account of new procedure and time lines.	ORR	The relatively minor amendments here have been made to the relevant implementing provisions of the 2005 Regulations. There was some elaboration in these provisions e.g. 35(6) gives legal effect to the final sentence in 11.2 i.e. requiring the ORR to issue direction rather than simply making decisions.
11.3	Not new	34(6)(d), (7) (8)	ORR	Paragraphs (7) and (8) existed as elaboration in the 2005 Regulations to give full effect to the requirement for the ORR to reconsider decisions (A11.3) and to ensure clarity as to when a decision under reconsideration applies. Paras (9) and (10) ensure the Secretary of State is consulted if a decision will affect HS1. Paras (11) and (12) gives effect to the limitation of rights pursuant to a decision.
11.4	EU Commission to adopt (with 18 months of transposition date) measures setting out details of the procedure to be followed for paragraphs (1), (2) and (3)	34(13)	EU Commission, ORR	This has been rephrased so it has appropriate legal effect.
11.5	Not new	The UK has chosen not to implement this as no such concession exists on an international route.	Not applicable	
11.6	Not new	34(12)	Not applicable	Elaboration also gives effect to “decisions” made by the ORR under 11.2
12	Levy on railway undertakings providing passenger services.	UK has chosen not to implement this optional provision.	Not applicable	
				Article 13 - Amendments have been made to the provisions dealing with access in the 2005 regulations. These included some reordering and rephrasing for logical progression of the regulation, or for sense. Amendments have been slotted in as required. At several points there is a risk of JCSI report for provisions being too ambiguous so a clear meaning has been indicated, particularly with the transposition of A13.5.  A13.3 provisions dealing with restructuring of service providers which are part of undertakings dominant in the market are moved to Part 3 which deals with management of infrastructure and railway undertakings
13.1	Not new	6(1) and (2)	Infrastructure managers	Kept old formatting for clarity and industry preference
13.2	Operators shall supply to all railway undertakings access to facilities referred to in point 2 of annex II and to services supplied in these facilities	6(1) and (2)	Service providers	Kept old rephrased formatting for clarity and industry preference

13.3	Operators of certain services facilities must be independent of firms which are active and hold a dominant position in national railway transport services markets for which the facility is used. Separate accounts needed. If operation of service facility ensured by an infrastructure manager or under its direct or indirect control, compliance with paragraph 3 can be demonstrated by compliance with Article 7	10	Service providers and the relevant dominant undertakings	Re- ordered for logical progression of regulation but substantive meaning the same. Third paragraph of 13.3 rephrased for legal certainty. Definition of “dominant undertaking” used to avoid unnecessary confusion. No change in substantive meaning.
13.4	Requests by Railway undertakings for access to and services in the facilities to be answered in a reasonable time and circumstances under which requests for access to and supply of service facilities and be refused.  Operators of certain service facilities whose operator is under direct or indirect control of a body which is active and holds a dominant position in the national railway transport market (i.e. “services under paragraph 3”) must justify refusals in writing and indicate viable alternatives.	6(3), (4), (5), (6) and 33(8)	Infrastructure managers and service providers	Largely copy out re- ordered for logical progression of regulation  A13.4 (second paragraph) is too ambiguous for the legal meaning to be clear so has been elaborated to make the most likely meaning clear. This clarification is helpful for potential users of service facilities in question (which mostly comprise UK businesses). 33(8) is gold plating but is considered necessary for legal certainty (spells out the ORR’s duty to resolve any appeal against refusal of services). This would be in the interests of UK business. Reflects regulation 29 of 2005 Regulations.
13.5	Operators of service facilities must attempt to meet conflicting requests for point 2 Annex II services. If they cannot then the applicant may complain to the regulatory body, which shall examine the case and take action to ensure that appropriate capacity is granted.	6(7), (8) (14) and 33(9)	Service providers and ORR	The reference to requests for "capacity for the relevant facility" is confusing as such requests in fact are for access and services, not capacity. We have used more accurate wording to avoid risk of JCSI reporting e.g. definition of dominant body. No negative impact on British business. An enabling provision which gives specific legal force to the complaint right has been inserted into regulation 33(9) this has some elaboration for legal certainty.
13.6	Where a service facility under point 2 Annex II has not been in use for at least 2 consecutive years and interest is expressed for access to this facility on the basis of demonstrated need, the service provider must advertise operation of the facility for rent, unless it can demonstrate that the facility is under reconversion.	6(9) and (10)	Service providers	"reconversion” has no clear meaning in the industry or from the context. Because of legal uncertainty and risk of reporting by the JCSI the most likely clear meaning has been elaborated. This is unlikely to have a cost implication for British business (here, train operating companies) in fact it clarifies a provision intended to give them greater access to the relevant services.



13.7	Where the operator of a service facility provides services listed in point 3 of Annex II as additional services, it shall supply them upon request to railway undertakings in a non-discriminatory manner.	6 (11)	Service providers	
13.8	No obligation to give services in annex II para 4 but where services are provided they must be provided in a non-discriminatory manner.	6(12)	Service providers	Split into two paragraphs to comply with Statutory Instrument Practice. No change to meaning.
13.9	The Commission may adopt implementing measures setting out the procedure and criteria to be followed for access to the services to be supplied in the service facilities referred to in points 2 to 4 of Annex II.	6(14)	Infrastructure managers and service providers	Copy out would not be sufficient to implement this provision as it would give not clear legal duty to any UK party. Elaborated for legal effect.
14.1	Member States to ensure cross border agreements do not discriminate between railway undertakings or restrict their ability to operate cross-border services.	7(1)	Secretary of State	Article 14 in general - wording adjusted so that obligation on "member states" applies in the UK to the Secretary of State.
14.2	Member States to notify the Commission of any such agreement before 16 June 2013 if concluded before that date and before conclusion of the agreement if new or revised. The Commission shall decide whether such agreements are in compliance with EU law by implementing act by stipulated time limits.	Cross border agreements relating to the Channel Tunnel have already been notified. To the extent that an implementing act stipulates that an agreement is not in compliance with EU law, implementation will be considered when such act is made.	Secretary of State	First sentence not copied out as obligation will have expired by the time the SI comes into force. Obligation on the Commission is not applicable here so have not copied out.
14.3	Member States shall notify the Commission of their intention to negotiate or conclude new agreements between Member States and third countries	7(2)	Secretary of State	
14.4	The Commission will inform Member State if such agreements are likely to undermine EU negotiations with the third country etc.  Member State to keep the Commission informed of such negotiations and where appropriate invite it to participate as an observer.	Commission's obligations not for implementation. 7(3)	Secretary of State	Commission's obligations not for implementation.
14.5	Member States may provisionally apply or conclude new or revised	7(4) The implementation of any delegated act	Secretary of State	

	cross-border agreements with third countries, provided they are compatible with EU law and do not harm the object and purpose of the transport policy of the EU. The Commission shall adopt authorisation decisions via delegated act described.	under this provision would be considered by the UK when it is made.		
15.1 to 15.4	Various Commission obligations	Not for implementation	Not applicable	Copy out is not appropriate, these are obligations for the EU Commission.
15.5	Member States must supply the Commission with the information it needs to carry out the monitoring role set out in the article, while respecting the role of social partners.	35(8) Also duty of loyal cooperation. Under A4 (3) TEU.	Secretary of State	Provision adjusted to indicate who is obliged to fulfil the duty.
15.6	The Commission may adopt measures to ensure consistency in the reporting obligations of Member States	35(9)	Secretary of State	Copy out would not be sufficient to implement this provision as it would give not clear legal duty to any UK party. Elaborated for legal effect.

**CHAPTER III - Licensing of Railway Undertakings  
(only substantively new provisions are listed here)**

The provisions in this Chapter are implemented in the Railway (Licensing of Railway Undertakings) Regulations 2005, which have been amended by Part 7 to add in substantive changes. Only substantively new provisions are listed here. Copy out has been preserved where possible in making these minor changes. 39(2) amends Regulation 2 of the Licensing Regulations to make necessary consequential changes. Schedule 1 amends references to now repealed EU legislation on the UK statute book.

17.5	The Commission shall adopt measures setting out details of the common template for the licence and, if needed, details on the procedure to be followed for the application of Article 17.	Drafted for in 39(5)(a)	ORR	
20.3	“considerable or recurrent arrears”	39(7)(b)	ORR	
20.5	Commission may adopt delegated acts to amend Annex III	Will be implemented when such measures are adopted	Secretary of State	
22	“without prejudice to Union rules” provision added, and “notwithstanding this obligation, the specificities and risk profile of different types of services, in particular cultural or heritage purposes may be taken into account when considering level of insurance cover.	39(7)(c)	ORR	
23.2	If the licensing authority reviews licences it shall be at least every 5 years	39(6)(a) (this also implements 24.1)	ORR	This provision has been adjusted for legal certainty, and slotted into the appropriate existing provision.
24.8	Notifications to go to the European Railway Agency rather than the Commission	39(6) (b) amending regulation 8(14) of the Licensing Regulations.	ORR	
25	Not new, apart from obligation in 25.2 for the	39(5)(b)	ORR	

	licensing authority to take account of all available information and for decision to be communicated without delay	Consideration of all available information is already part of UK administrative law, and judicial remedy is available in the event this is not done.		
<b>CHAPTER IV - Levying of charges for the use of railway infrastructure and allocation of railway infrastructure capacity.</b>				
26.1	Member States shall ensure that charging and capacity-allocation schemes follow the principles set down in the Directive etc.	Allocation scheme is implemented under Schedule 4 and 20(3) in respect of allocation bodies. Charging scheme is implemented by Schedule 3, and 15(8) in respect of charging bodies	Infrastructure manager, charging and allocation bodies	
				Article 27 - Material in Annex IV was incorporated into Regulation 11 in the Railways Infrastructure (Access and Management) Regulations 2005, and much of it reworded and structured at the time for better ease of reference and clarity. This structure has been kept with changes made to incorporate amendments to the Annex and to A27. Provisions relating to the content of the network statement are scattered throughout the Directive, these have been added to the (new) regulation 14 to keep these all in one place. Where new provisions are added copy out has been used where this has been possible.
27.1	Mostly not new. New provision for network statement to be published in at least 2 languages; for the content to be available in electronic form free of charge on a web portal to be set up by infrastructure managers as part of their cooperation under Articles 37 and 40.	14(1), (8) – (11)	Infrastructure manager	New provision at 14(10) and (11) copied out
27.2	Mostly not new. New obligation for network statement to contain information setting out the conditions for access to service facilities connected to the network of the infrastructure manager and for supply of services in these facilities or indicate a website where such information is available free in electronic format.	14(4)(a) and (b) Annex IV is in 14(4).	Infrastructure manager, service providers, allocation and charging bodies.	New provision at 14(4) (b) copied out. The rest is pre-existing.
27.3	Not new	14(7)	Infrastructure manager, service providers, allocation	

			and charging bodies	
27.4	Not new	14(8)	Infrastructure manager	
28	Not new	20(13), 20(14)(b)	Infrastructure manager applicant.	
29.1	<p>Mostly not new Third paragraph - Member States shall ensure network statement contains the charging framework and charging rules or indicates a website where these are published.</p> <p>Without prejudice to management independence etc. the Parliament may scrutinise and review the level of charges determined by the infrastructure manager. Any review must ensure that charges comply with the Directive, charging framework and charging rules.</p>	<p>15(1) to (4) (includes provisions to account for HS1 network) Network Statement - 14(4)(c) and 14(10)</p> <p>5<sup>th</sup> paragraph of A29.1 regarding parliamentary scrutiny not implemented as Parliament already has wide prerogative powers to scrutinise and comment on charges.</p>	Infrastructure manager	<p>Article 29 in general - Most of these provisions are not new so we have left the drafting structure of the original implementing legislation to facilitate ease of access.</p> <p>Obligation as to content of network statement inserted into regulation dealing with the network statement to fit in with existing structure.</p> <p>– Paragraph 15 (3) and (4) adapt these provisions to account for the structure of HS1.</p>
29.2	Not new	Sch 3 para 1(3)		
29.3	Not new	Sch 3 1(1)		
29.4	Not new	15(12), (13)		
30.1	Not new	16(2)		
30.2	<p>Member States to ensure that a contractual agreement fulfilling parameters of annex V is concluded between infrastructure manager and competent authority lasting no less than 5 years</p> <p>Member States shall ensure that contractual agreements in force on 15 December 2012 are modified, if necessary to align them with this Directive upon their renewal, or at the latest by 16 June 2015.</p>	Sch 4A Railways Act 1993 Arrangements in force on 15 December 2012 comply with the provisions. <sup>1</sup>	Secretary of State, infrastructure manager, Scottish Ministers and ORR	Copy out not needed, obligations already fulfilled by other statutory obligations designed to regulate NR expenditure and deliverables, and does not need repeating.

<sup>1</sup> The ORR's access charges review, required by Sch 4A of the Railways Act 1993 imposes a statutory system under which the regulator regulates what must be achieved by infrastructure managers in a review period, drawing on a statutory "statement of funds available" provided by the infrastructure manager and a "high level output specification" detailing what the Secretary of State and Scottish Ministers wish to see delivered. The ORR specifies delivery requirements for the review period, and these are delivered via track access agreements between the infrastructure manager and train operating companies, the terms of which must be approved by the ORR. Together the statutory duties and documents fulfil the requirements of this article, and of Annex V without the need for further legislation. This process has been completed for a five year period commencing 2014. As regards the Channel Tunnel the tri-lateral Rail Usage Contract ('RUC') combined with the Concession agreements between the French and UK governments, and the infrastructure managers provide a similar function. As regards the HS1 network, the development agreement between the Secretary of State and HS1 Ltd, together with the access charges review process fulfil these requirements.

30.3	Not new	16(7)	ORR	
30.4	Implementation via regulatory measures must be based on analysis of achievable cost reductions.	16(9)	ORR	Elaboration to make it clear where the legal obligation lies.
30.5	Contractual terms and payment structure to be agreed in advance and to cover the whole of the contract period.	Confirmed. No implementation through legislation needed (see footnote to 30.2).	Secretary of State and infrastructure manager	Obligations already fulfilled by other statutory obligations as above.
30.6	Applicants and potential applicants to be informed of contract and given the opportunity to express their views before it is signed. Contract to be published with a month of completion.  Infrastructure manager to ensure consistency between the provisions of the contractual arrangements and the business plans.	The ORR consults in relation to the Access Charges Review under Schedule 4A of the Railways Act 1993. In relation to the Channel Tunnel and HS1, this article imposes a directly effective obligation on the UK Government to consult all relevant parties in accordance with this article at the same time as the relevant agreements are renewed, re-negotiated or replaced.  There is already consistency between the provisions of the contractual arrangements and the business plans.	Office of the Rail Regulation	
30.7	Infrastructure managers to maintain a register of assets as specified	16(10) and (11)	Infrastructure manager	Obligation split into two paragraphs to comply with SIP and fit in with pre-existing style of regulations. Meaning not changed.
30.8	Infrastructure managers to establish a method for apportioning costs to the different categories of services offered. Method to be updated according to best international practice.	16(12) and (13)	Infrastructure manager	Obligation split into two paragraphs to comply with SIP and fit in with pre-existing style of regulations. Meaning not changed.
31.1	Charges for use of the railway infrastructure <b>and service facilities</b> also to be paid to the infrastructure manager <b>and the service facility operator</b> and used to fund business.	15 (6), (7)	Infrastructure manager, service provider and railway undertakings	Article 31 in general – The structure and wording of regulation 15 has mostly been kept making the required amendments.  Copy out – same structure adopted as 14(5) for consistency.
31.2	Member States must require the infrastructure manager <b>and service facility</b>	15 (11), (12), (13)	Infrastructure manager	Copy out not appropriate as applies no specific obligation on any legal body so elaborated to do so. Amendment to existing provisions made.

	<b>operator to provide the regulatory body with information on charges in order to allow the latter to perform its functions under Article 56.</b> They shall be able to demonstrate that charges invoiced comply with the rules etc. in the network statement.		and service provider	
31.3	First paragraph not new.  Before 16 June 2015 the Commission shall adopt measures setting out the modalities to calculate the cost that is directly incurred operating the train. The infrastructure manager may decide gradually to adapt to those modalities during a period of no more than 4 years after the entry into force of the act.	Sch 3 para 1(4) (not new) and (5) (new).	Infrastructure manager and service providers	Wording adapted to ensure legal obligation is clearly allocated and fitted into existing structure of the regulation (i.e. into Schedule 3). Commission's duty not copied out into UK legislation.
31.4	Not new	Sch 3 para 1(8)	Infrastructure manager and service providers	
31.5	Not new (new provisions apply if charges with regard to environmental effects are implemented e.g. measures regarding noise effects)	The UK has chosen not to implement this discretionary measure, including the charges to take account of noise effects.	Not applicable.	
31.6	Not new	Sch 3 para 1(9)		
31.7	Charges imposed for track access within service facilities referred to in point 2 of Annex II, and the supply of services in such facilities shall not exceed the costs of providing it, plus a reasonable profit.	Sch 3 para 1(6)	Infrastructure manager and service providers	
31.8	Where additional and ancillary services are offered by only one supplier the charge imposed shall not exceed the cost of providing it plus a reasonable profit. (mostly not new).	Sch 3 para 1(7)	Service providers	
31.9	Not new	UK has decided not to implement this provision, as before.	Not applicable	
31.10	The operator of the service facility for supply of services in points 2, 3 and 4 of Annex II to provide the infrastructure manager with information on charges to be	14(3)	Service providers	Copy out would duplicate an existing obligation so obligation not repeated.

	included in the network statement etc.			
32.1	<p>Levies allowed whilst preserving competitiveness of rail market segments (not new)</p> <p>Before approving the levy of such mark-ups, Member States shall ensure that the infrastructure managers evaluate their relevance for specific market segments, considering at least the pairs listed in point 1 of Annex VI. The list of market segments to contain at least freight services, passenger services within the framework of a public service contract and other passenger services.</p> <p>Infrastructure managers may further distinguish market segments in which railway undertakings are not currently operating but may provide services during the period of validity of the charging system shall also be defined. The infrastructure manager shall not include a mark-up in the charging system for those market segments.</p> <p>The list of market segments shall be published in the network statement and shall be reviewed at least every five years. The regulatory body referred to in Article 55 shall control that list in accordance with Article 56.</p>	<p>Sch 3 para 2(1) to (10)</p> <p>14(4)(e)</p>	<p>Infrastructure manager, ORR</p>	<p>Annex pairs inserted into text for ease of reference, and to avoid report by JCSI (i.e. an annex referring to another annex).</p>
32.2	<p>For the carriage of goods from and to third countries operated on a network whose track gauge is different from the main rail network within the Union, infrastructure managers may set higher charges in order to obtain full costs recovery of the costs incurred.</p>	<p>The UK is only linked by rail to a country (France) with the same gauge so this has not been transposed.</p>	<p>Not applicable</p>	
32.3	<p>Not new</p>	<p>Sch 3 para 3</p>	<p>Infrastructure manager</p>	
32.4	<p>The infrastructure charges for the use of specified railway corridors shall be differentiated to incentivise trains with compliant ETCS. Such differentiation shall not</p>	<p>The UK has not implemented this provision as there is no corridor specified in Commission Decision</p>	<p>Not applicable</p>	

	result in any overall change in revenue for the infrastructure manager. Member States may decide that this differentiation of infrastructure charges does not apply to specified railway lines on which only ETCS equipped trains may run. Member States may decide to extend this differentiation to railway lines not specified in Decision 2009/561/EC.	2009/561/EC to which the UK is connected.  The UK has opted not to differentiate charges to encourage ETCS on other lines not specified in the relevant direction.		
32.5	Not new	Sch 3 para 4		
32.6	Not new	Sch 3 para 5		
33.1 to 4	Not new	Sch 3 para 6(1) to (5)		Para 6(4) has been added to ensure discounts comply with the access charges review or development agreement.
33.5	New sentence ensuring schemes are applied in a non-discriminatory manner to any railway undertaking	Sch 3 para 6(6) and (7)	Infrastructure manager	
34	Not new	The UK has decided not to implement this provision. An equivalent scheme is provided for in Part 2 Transport Act 2005		
35.1	Not new	17(1)and (2)	Infrastructure manager	Copy out Existing structure of clause kept, wording is substantially the same with different structure for clarity.
35.2	The basic principles of the performance schemes as listed in point 2 Annex VI shall apply.	17(3) New criteria at Sch 3 para 7 14(4)(d)	Infrastructure manager	
35.3	The Commission may adopt delegated acts to amend point 2(c) of Annex VI e.g. in the light of the evolution of the rail market etc.	Further changes will be implemented in GB when they are made.	Infrastructure manager	
36	Infrastructure managers may levy a non-usage charge which shall provide incentives for efficient use of capacity. The levy of such a charge on applicants is to be mandatory in the event of their regular failure to use allocated paths. The infrastructure managers shall publish in their network statement the criteria to determine such failure to use. The regulatory body may control this in accordance with Article 56. Charge to be paid by either the applicant or the railway undertaking appointed in accordance with Article 41(1). The infrastructure	18 14(4)(o)	Infrastructure manager	This text has been split into separate provisions for clarity, and to fit in with the existing structure of previous implementing provisions



	manager to be able to inform any interested party of the infrastructure capacity which has already been allocated to user railway undertakings.			
37.1	Infrastructure managers to cooperate to enable efficient charging as detailed, and towards optimal competitiveness of international rail services and efficient use of networks. To establish appropriate procedures.	19(1) and (2)	Infrastructure manager	
37.2	Cooperation to enable mark-ups and performance schemes to be efficiently applied, for traffic crossing more than one network.	19(3)	Infrastructure manager	
				Article 38 The existing drafting has been kept. This included some elaboration and restructuring explained below.
38.1	Not new	20(10) (11), (12), (13), (16)(a)	Infrastructure manager and applicants	This includes some elaboration to make it clear that the prohibition in trading of capacity applies no matter how capacity is granted. This is seen to be good for business as any appeal to the ORR over this is likely to result in lost costs. Also a limitation on the exclusion from further allocation of capacity for those who trade or transfer capacity has been kept in as it is good for British train operating companies not to be excluded indefinitely.
38.2	Not new	20(14) 22(1)		The paragraph relating to framework agreements in A38.2 was, in the existing UK legislation, inserted into the regulation dealing with framework agreements. Since this is helpful and is already UK legislation, it has been kept.
38.3	Not new	20(15)		The existing UK legislation rephrased this obligation to implement via contracts rather than legislation, and to make it clear who must enter into the contracts. On balance we feel it is in GB business' interests to negotiate their own contracts rather than have it set out for them in legislation so have kept this as it is.
38.4	Not new	20(8) and (9)		Existing working kept. Directive paragraph has extremely long sentence which has been broken up and reordered to make the actual obligation clearer.
39.1	Not new	20(1),(2), and (16)(a)		Article 39 in general - the existing UK legislation has been preserved, this is substantively the same wording, restructured for clarity.
39.2	Not new	20(16)(c)		
40.1	Infrastructure managers to cooperate for the efficient creation and allocation of capacity over more than one network including under	21(1),(2)(a),(4),(5) and 14(4)(h)(vii)	Infrastructure manager	The current wording and structure of this regulation have been preserved for legal clarity.

	<p>framework agreements, and to establish appropriate procedures, and organise train paths</p> <p>Representatives of infrastructure managers whose allocation decisions have an impact on other infrastructure managers to coordinate regarding allocation at an international level. The principles and criteria for capacity allocation established under this cooperation shall be published in the network statement. Representatives from third countries may be associated.</p>			<p>The requirement requiring publication of criteria has been slotted into the section on the network statement for ease of reference.</p>
40.2	<p>The Commission shall be informed of and invited to attend as an observer at the main meetings detailed. Regulatory bodies shall receive sufficient information.</p>	21(7) and (8)	Infrastructure manager	
40.3	Not new	21(9)	Infrastructure manager	
40.4	Not new	14(4)(h)(vii)	Infrastructure manager	
40.5	Not new	21(10) and (11)	Infrastructure manager	
41.1	<p>New obligation for applicants to appoint a railway undertaking to conclude an agreement for capacity under Article 28, without prejudice to the right of applicants to conclude agreements under A44(1).</p>	20(7)	Applicants	<p>The provision is slotted into pre-existing regulation dealing with capacity allocation</p>
41.2	Not new	20(17), (18) (newly implemented)	Infrastructure manager	<p>The provision is contained in a very large paragraph which has been split up for so the obligations are clear. Wording has not been substantively changed.</p>
41.3	<p>Commission to adopt implementing acts with regard to criteria for requirements under 41.2</p>	20(19)	Infrastructure manager	<p>Reworded to ensure there is an enforceable duty in UK law (on the infrastructure manager)</p>
42.1	Not new	22(1), (3) (15)	Infrastructure manager and applicants	<p>Article 42 in general - this article is unchanged by the Directive other than the addition of paragraph 8. The UK regulations have been kept broadly unchanged to avoid confusion caused by minor wording changes offering no discernible benefit. Adjustments impose the required obligations on the relevant subjects clearly and to require approval of agreements in relation to HS1 by the ORR.</p>

				<p>Gold plating from the 2005 regulations has been left:</p> <p>22(14) preserves pre-existing provisions of the 1993 Act in relation to access agreements which are framework agreements;</p> <p>22(15) ensures ORR approval is needed for a framework agreement to be agreed in respect of HS1 (thereby preserving the concession); and</p> <p>22(16) ensures that this regulation does not inadvertently apply provisions of the 1993 Act to HS1.</p> <p>The requirement for pre-approval will not apply to the Channel Tunnel so as to be consistent with the approach the French currently take for their network.</p>
42.2	Not new	22(4)	Infrastructure manager and applicants	
42.3	Not new	22(5)	Infrastructure manager and applicants	
42.4	Not new	22(6)	Infrastructure manager and applicants	
42.5	Not new	22(7) and (8)	Infrastructure manager and applicants	
42.6	Not new	22(9), (10),(11),(12)	Infrastructure manager and applicants	Kept drafting clarifying when the article applies
42.7	Not new	22(13)	Infrastructure manager and applicants	
42.8	The Commission may adopt measures setting out the details of the procedure and criteria to be followed for the application of this article.	22(17)	Infrastructure manager	Reworded to ensure there is an enforceable duty in UK law (on the infrastructure manager).
43.1	Not new	20(10)	Infrastructure manager	These provisions are not new. The 2005 Regulations slotted them into appropriate regulations with substantively unchanged wording so the drafting has not been changed.
43.2	The Commission may adopt delegated acts to amend Annex VII to take into account operational considerations for the allocation process.	Will implement when act has been adopted.	Secretary of State	No UK obligation here.

43.3	Not new	21(2)(b) and (3)	Infrastructure manager	
44.1	Not new	23(1)	Infrastructure manager	
44.2	Not new	23(2)	Infrastructure manager	Wording rephrased for clarity, no discernible business benefit to keeping ambiguous wording.
44.3	Not new	22(2)	Infrastructure manager	
44.4	Applicants may apply to a single infrastructure manager or a joint body for train paths crossing more than one network. Such infrastructure manager or joint body to be permitted to act on behalf of the applicant. This is without prejudice to Regulation (EU) No. 913/2010 concerning a European rail network for competitive freight (some not new).	23(3) and (4)	Infrastructure manager and applicants	Appropriate existing provisions adjusted.
45.1	Not new	24(1)	Infrastructure manager	Article 45 in general - the provisions are the implementing provisions of the 2005 Regulations are substantively the same as the Directive although structured and phrased differently in places for clarity. There is no advantage to UK business in changing. 25.7 makes dispute resolutions subject to right to judicial review, which is to the advantage of UK train operating companies.
45.2	Not new	24(2)	Infrastructure manager	
45.3	Not new	24(3), (9)	Infrastructure manager	
45.4	Not new	24(8)	Infrastructure manager	
46.1	Not new	24(4)	Infrastructure manager	
46.2	Not new	24(4)	Infrastructure manager	
46.3	Not new, disclosure provisions added	24(4) and (5), 20(16)(c)	Infrastructure manager	
46.4	Not new	14(4)(h)(v)	Infrastructure manager	
46.5	Not new	24(4)	Infrastructure manager	
46.6	Not new	24(6), (7) and 14(4)(h)(vi)	Infrastructure manager	

				<p>Copy out A47 (was previously Art 22 Directive 2001/14/EC) - This provision is not new so the structure of the old regulation has been kept insofar as it aids clarity without compromising UK interests. 27(3) is gold plating and requires the infrastructure manager to alert relevant parties if there is a declaration of congestion. This is intended to allow businesses and public authorities to plan accordingly.</p> <p>Subsections (7), and (8) were not required by the legislation, but were added in 2005 to allow for situations where congestion is resolved. This is still considered to provide additional flexibility which is helpful for the rail industry. Without (7) and (8) the declaration of congested infrastructure would have to continue until the end of the working timetable period even if the congestion was resolved. This could lead to sub-optimal use of the rail infrastructure in question.</p>
47.1	Not new	27(1) and (2)	Infrastructure manager	Copy out – there is some elaboration in regulation 27(2) implementing the final sentence of 47.1 This makes the legal obligation clear and is to the benefit of UK rail operators.
47.2	Not new	27(4)	Infrastructure manager	
47.3	Not new	27(5)	Infrastructure manager	Obligation previously restructured for clarity. No change in meaning.
47.4	Not new	27(6)(a) 2 <sup>nd</sup> , 3 <sup>rd</sup> and 4 <sup>th</sup> paragraphs not implemented	Infrastructure manager	Obligation previously restructured for clarity. No change in meaning.
47.5	Not new	27(6)(b)	Infrastructure manager	Obligation previously restructured for clarity. No change in meaning.
47.6	Not new	14(4)(h)(viii)	Infrastructure manager	
48.1	Not new	25(1),(2),(3)	Infrastructure manager	Article 48 in general – again this is not new so the structure of the old regulation has been kept.
48.2	Not new	25(4)	Infrastructure manager	
49.1	Not new	26(1)	Infrastructure manager	<p>Article 49 in general - existing implementing wording kept including elaborations to make the meaning clear.</p> <p>24(3)(b) contains an obligation for an infrastructure manager to consult with the Secretary of State, Scottish Ministers, ORR and other interested parties before designation. This is deemed appropriate because of the potential impact on those bodies of a declaration of specialised infrastructure by the infrastructure manager.</p>
49.2	Not mostly not new, provision relating to rolling stock deleted	26(2) and (3)	Infrastructure manager	
49.3	Not new	14(4)(i)	Infrastructure manager	

50.1	Not new	28(1)	Infrastructure manager	Article 50 in general– the original structure has been kept. NB 28(4) and parts of 28(5) are gold plating, but have been kept as they are considered to be helpful for UK business, and for rail infrastructure funding planning. 28(4) (not new) requires consultation with Secretary of State and if relevant Scottish Minister during preparation of the capacity analysis. 28(5) (not new) additionally requires publication of the analysis so TOCs can see it.
50.2	Not new	28(2),(3)	Infrastructure manager	Rephrased to make meaning clear for the ORR
50.3	Not new	28(5)	Infrastructure manager	
51.1	Not new	29(1)	Infrastructure manager	Article 51 in general - the obligations are not new and the original structure has been kept above, including clearer structure. 29(7) (not new) It clarifies what the infrastructure manager must do with the plan, and that its dissemination is necessary whether or not it is approved, important details which are omitted by the Directive. Given the plan would impact on rights of UK business, this is felt to be useful.
51.2	Not new	29(2), (3), (4)	Infrastructure manager	Parties with which infrastructure manager must consult in drawing up plan elaborated. Left as no advantage to UK from deleting and considered useful for it to be stipulated that Secretary of State and Scottish Ministers be included, since there may be cost implications. 29(6) is gold plating.
51.3	Not new	29(5)	Infrastructure manager	
51.4	Not new	29(6)	Infrastructure manager	
52.1	Obligation to specify what it will take account of in respect of previous utilisation when determining priorities for allocation.	30(3) 14(4)(xi)	Infrastructure manager	Article 52 in general - the only material change to this provision at EU level was to make the provisions of A52.1 obligatory. Again, the current structure of the regulation has been kept as it is clear.
52.2	Not new	30(1) and (2) 14(4)(x)	Infrastructure manager	
53.1	Not new	23(5)	Railway undertaking	Article 53 in general - apart from 53.3, the obligations are not new and old implementing wording is kept as there is no perceptible advantage to UK stakeholders in changing it. Wording was slotted in to appropriate paragraphs and elaborated for clarity e.g. to avoid the confusion of using new names for existing concepts (“scheduling process”).
53.2	Not new	20(20)	Infrastructure manager	
53.3	Infrastructure manager must inform interested parties as soon as possible about unavailability of infrastructure capacity due	23(6)	Infrastructure manager	

	to unscheduled maintenance work.			
54.1	Not new	31(1) and (2)	Infrastructure manager	Article 54 - this is not new and applies only to the infrastructure manager. Existing structure has been kept for clarity. 31(5) is gold plating and is important to ensure that there is some agreed limit on the resource contribution that can be required from TOCs under (4) so has been retained. (i.e. protects UK businesses).
54.2	Not new	31(3)and (4)	Infrastructure manager	
54.3	Not new	Not implemented	Not applicable	
55.1	New obligation for regulatory body to be a single, stand-alone authority, independent from any other public or private entity.	s15 of and Sch 1 to the Railway Transport and Safety Act 2003 establishes the ORR as regulator for GB. Sch 1 includes sections as to constitution, staff, proceedings, conflict of interest etc. These provisions already meet the requirements of this paragraph.	Secretary of State	Article 55 in general - Since many of the obligations are already part of UK law it is inappropriate to duplicate by copying out. Provisions have been slotted into Regulation 32 to cover aspects not already part of UK law Audit provisions, since they are an ORR function, have been given a separate section, to reflect the structure of the 2005 Regulations.
55.2	Allows for regulatory body to be perform stated functions	Not implemented	Not applicable	
55.3	Staff of regulatory body to be independent, in particular decisions under Article 56 to be taken by persons appointed under clear and transparent rules guaranteeing independence by specified persons or bodies not directly exerting ownership rights over railway undertakings.	The Railways and Transport Safety Act 2003 Sch 1 para 8, together with the statutory code under it requires employees of the ORR to be independent and impartial civil servants.  10(2) and 11(1) of the Constitutional Reform and Governance Act 2010 sets out clear and transparent rules for appointment of civil servants. The provisions of this paragraph are therefore met.	ORR	
55.3	MS to decide whether persons taking decisions under A56 are appointed for a fixed and renewable or a permanent basis allowing dismissal for disciplinary reasons only.	32(5) and (6)  s10 (2) and 11(1) of the Constitutional Reform and Governance Act 2010.	ORR	

	<p>Selection to be in a transparent procedure on the basis of merit, including appropriate competence and relevant experience, preferably in the field of railways or other network industries.</p> <p>MS to ensure that such persons act independently from any market interest related to the railway sector and hold no interest or business relationship with any regulated undertaking or entity.</p> <p>Annual declarations of interests and commitment required</p> <p>Prohibition on seeking or taking instructions from any other entity etc.</p>	<p>The ORR has responsibility for the appointment of its staff under Schedule 1 Railways and Transport Safety Act 2003</p>		
56.1	<p>Right to appeal to be without prejudice to the resolution procedure in place under A46.6 relating to allocation of infrastructure.</p> <p>Amendments made to list of infrastructure manager decisions which can in particular be appealed against.</p>	33(1) and (2)	ORR.	<p>Article 56 in general - the structure and wording of existing UK provisions have been amended as needed. This has involved slotting various provisions into the appropriate sections of this legislation to avoid confusion and repetition. Occasionally provisions have been restructured so the meaning is clear e.g. 56.9 where ambiguity would hamper the ability of UK businesses to determine their rights.</p> <p>Also elaboration included to impose an enforceable obligation on the appropriate body e.g. paragraphs 56.10 and 11.</p> <p>Reg 33(6) was added to give clear effect to the ORR's duties in respect of complaints made for refusal of an application for access to/service in a service facility under A13.</p> <p>Also drafting carving out UK appeals procedure under Railways Act 1993 is preserved to regulate overlapping bases for appeal, and preserves Secretary of State right of consultation in the event decisions affect HS1.</p> <p>The existing enforcement provisions in have been kept to reflect industry preference.</p>
56.2	<p>Requires the regulatory body to have the power to monitor the competitive situation in the rail services markets and shall control points (a) to (g) of paragraph 1. It must check whether the network statement contains discriminatory clauses or creates discretionary powers for the infrastructure manager which may be used to discriminate against applicants.</p>	35(1), (2)	ORR	<p>Gold plating - Transposed as a duty, at the request of the ORR and in accordance with previous policy decision.</p>
56.3	<p>Requires the regulatory body to cooperate closely with the national safety authority and licensing authority.</p>	<p>35(5),(6),(7)</p> <p>In respect of Great Britain, the</p>	ORR	<p>56.3 – cooperation provisions given own section and divided into paragraphs for ease of reference and to fit in with pre-existing structure of 2005 Regulations. Some rephrasing to avoid repetition</p>



	These authorities must develop a framework for information sharing and cooperation which includes a mechanism for the regulatory body to provide recommendations relating to competition which the safety and licensing authorities must examine before making a decision. The relevant authority must give reasons if it decides to deviate from these recommendations.	regulatory body, the safety and licensing authority is the ORR, except that the safety authority in respect of the UK half Channel Tunnel is the IGC.  Northern Ireland has its own regulatory body, safety authority and licensing authority (the Department) and since regulation of NI is separate, we have provided here for the regime in GB.		and to impose an enforceable obligation on the appropriate party
56.4	Member States may decide to give the regulatory body the task of adopting non-binding opinions on drafts of the business plan under Article 8(3).	Not implemented.	Not applicable	
56.5	Requires the regulatory body to have the necessary organisational capacity proportionate to the importance of the rail sector in the Member State.	Railways and Transport Safety Act 2003 s15 of Schedule 1 has allowed for the appropriate staffing and funding of the regulator. In addition, s.9 Railways Act 1993 (the power to include, in a licence, a condition to make a payment to ORR) and Sch 3, para 12 Railways Act 2005 (the power to impose a safety levy).	Not applicable	
56.6	Not new.	32(2) and (3)		
56.7	Requires the regulatory body regularly to consult representatives of users of the rail freight and passenger transport services, to take into account their views on the rail market.	35(8)	ORR	Inserted into the appropriate section.
56.8	The regulatory body must have the power to request relevant information from various parties. Information must be replied within not more than a month unless an extension is agreed. The regulatory body must be able to enforce this with appropriate penalties. Information to be supplied includes all data required for the appeal and monitoring function under para 2 including data for statistical	37 applies the requirements for provision of information set out in section 80 of the Railways Act 1993 to the ORR.	Recipients of requests for information	The current drafting has been adapted to account for these provisions. The mechanism makes use of existing powers in UK law.

	and market observation purposes.			
56.9	<p>The regulatory body must consider any complaints, ask for information and initiate consultations as stated. It shall decide on complaints, take action to remedy the situation and inform parties of its decisions within at least 6 weeks from receipt of all relevant information. It shall where appropriate decide on appropriate measures to correct discrimination against applicants etc. Decisions to be binding and the regulatory body must be able to enforce its decisions with appropriate penalties. Provision regarding appeals against refusal to grant infrastructure capacity (not new)</p>	<p>33(5)</p> <p>35(11) and 42 provide for decisions to be binding, and for the wounded parties to seek damages in the courts, as well as obliging the ORR to enforce them via the courts. Enforcement could ultimately lead to fines for contempt of courts if orders for compliance are not met.</p> <p>33(10)</p>	ORR	Existing wording has been adapted to keep current structure. This preserves the alternate appeals provisions under the Railways Act 1993 to avoid two statutory methods of appeal. If suggested option in consultation of providing a regime akin to RA 1993 sections 55-57A is to be adopted, drafting will need amended.
56.10	Requires judicial review to be available in relation to decisions of the regulator, and for appeals to have a suspensive effect on the decision only when the immediate effect of the decision may cause irretrievable or manifestly excessive damages for the appellant, without prejudice to constitutional law.	Part 54 of the Civil Procedure Rules 1998, 32(5) and 33(11) confirm the existence of a right to judicial review. Under existing equitable principles, the granting of an interim order to suspend the effect of the ORR decision would only be granted by a court if the issue is serious and where (retrievable) damages would not be an adequate remedy	Not applicable	
56.11	Requires decisions of the regulator to be published.	33(5)	ORR.	
56.12	<p>Requires the regulator to be able to audit or initiate audits with infrastructure managers, operators of service facilities and railway undertakings to verify compliance with Article 6.</p> <p>Entitles regulator to request from various specified bodies relevant information and in particular accounting information listed in Annex VIII with sufficient detail as necessary and proportionate.</p>	36 and Sch. 5	ORR, bodies the subject of audits.	The provision relating to audit are given their own section to fit in with the existing structure of the 2005 Regulations.

	Without prejudice to the powers of the national authorities responsible for State Aid issues, the Regulatory body may draw conclusions from the accounts concerning state aid issues which it shall report to those authorities.			
56.13	Commission may to adopt a delegated act amending Annex VIII to adapt it to the evolution of accounting and control practices etc.	The UK will transpose via an amendment to the SI when the delegated act is adopted.	Not applicable	
57.1	The regulatory bodies shall exchange information and cooperate and work together in a network as described. Commission to support such exchange of information.	38(2), (3)	ORR and the Commission	Article 57 in general - The text has been copied out with some minor restructuring to clarify meaning. Text which it is not necessary to implement has been left out e.g. imposing obligations on the European Commission or on the regulatory bodies of other Member States.
57.2	The regulatory bodies shall cooperate closely for the purposes of mutual assistance in their market monitoring tasks and handling complaints or investigations.	38(4)	ORR	
57.3	In the case of a complaint 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 regulatory body concerned shall consult relevant regulatory bodies and, where appropriate, the Commission, and shall request all necessary information from them before taking its decision.	38(5)	ORR	
57.4	The regulatory bodies consulted in accordance with paragraph 3 shall provide all the information to be used only for the purpose of handling the complaint or investigation referred to in paragraph 3.	38(6), (7)	ORR	Split into two provisions for clarity. Adapted to constitute an obligation on the ORR.
57.5	The regulatory body receiving the complaint or conducting an investigation on its own initiative shall transfer relevant information to the regulatory body responsible in order for that body to take measures regarding the parties concerned.	38(8)	ORR	

57.6	Member States shall ensure that any associated representatives of infrastructure managers as referred to in Article 40(1) provide, without delay, all the information necessary for the purpose of handling the complaint or investigation referred to in paragraph 3 of this Article and requested by the regulatory body of the Member State in which the associated representative is located. That regulatory body shall be entitled to transfer such information to the regulatory bodies	38(9)	ORR	Adapted to identify what is meant by “associated representatives of infrastructure managers”. No business advantage to retaining current confusing language.
57.7	At the request of a regulatory body, the Commission may participate in the activities listed under paragraphs 2 to 6 for the purpose of facilitating the cooperation of regulatory bodies as outlined in those paragraphs.	Not for implementation	Commission	
57.8	Regulatory bodies shall develop common principles and practices. The Commission may adopt measures setting out such common principles and practices.	38(10) The Commission measure will be implemented when it has been made.	ORR	
57.9	Regulatory bodies shall review decisions and practices of associations of infrastructure as detailed	38(11)	ORR	Language adapted as above to identify “associated infrastructure managers”.
58	Public procurement rules	46	Not applicable	Language adapted to refer to UK rather than EU legislation.
59	Derogations	Does not require implementation	Not applicable	
60	Exercise of the delegation	Does not require implementation	Not applicable	
61	Commission may on request or own initiative adopt acts deciding whether certain measures may continue to be applied.	To the extent such acts are directly effective, they are given effect to in s2(1) European Communities Act 1973. To the extent they are not the UK will consider implementation when they are made.	Relevant authority, or Secretary of State, as appropriate	
62 and 63	Do not require implementation	Commission	Not applicable	
64	references to repealed directives must be corrected	Sch 1	Not applicable	Schedule 1 is not copy out. It is new drafting required to update references to repealed EU legislation in UK law.

65 to 67	Do not require implementation	Commission	Not applicable	
	<b>Annexes</b>			
I	Not new	3 and s82 of the Railways Act 1993	Not applicable	
II	Points 1 and 2 - mostly not new	Sch 2		This is mostly not new. The wording is slightly restructured in places for clarity but there is no substantive difference in meaning so it has been kept, and amended where necessary.
III	“taxes and social security contributions” added to Financial fitness criteria	39(7)(a) amending the Railway (Licensing of Railway Undertakings) Regulations 2005	Railway undertakings, the ORR	
IV 1	Amendment requiring information to be consistent or refer to the rail infrastructure registers.	14(4)(a) and (5)	Infrastructure manager	Annex IV in general - Information is slotted into 14 to fit into the structure adopted by the 2005 regulations.
2	Amendments to paragraph 2	14(4) (c), and (6)	Infrastructure manager	
3	Amendments to paragraph 3(c) (d)  Final paragraph – template for capacity requests and publication of information on the allocation procedures for international train paths	14(4)(g) 14(4)(h)(i),(ii),(iii),(iv),(v),(viii),(ix),(xi) 14(4)(k) 14(4)(l)	Infrastructure manager	
4	Section on applying for a license and safety certificate	14(4)(m)	Infrastructure manager	
5	Section on procedures for dispute resolution and appeal relating to access and the performance scheme	14(4)(f)	Infrastructure manager	
6	Section on access and charging for service facilities Operators of service facilities not controlled by the Infrastructure manager to give information on charges and technical access conditions for inclusion in the statement	14(3) 14(4)(b)	Infrastructure manager	
7	Model framework agreement	14(4)(n)	Infrastructure manager	
V	Basic parameters for contractual agreements	These form part of access charges review procedures under Sch4 Railways Act 1993 so have not been implemented again	Not applicable	
VI	Requirements for costs and charges related to railway infrastructure	Sch 3(9) (pairs, para 1)	Infrastructure manager	

		Sch 3(7) (performance scheme, para 2)		
VII	Not new	Sch 4	Infrastruct ure manager, allocation body and applicants	This is substantively unchanged so the existing provisions which have been divided into paragraphs with headings for clarity, have been left unchanged.
VIII	Accounting information to be supplied on request	Sch 5	Infrastruct ure managers, service providers, railway undertakin gs	This is substantively unchanged so the existing provisions which have been divided into paragraphs with headings for clarity, have been left unchanged.