



STATUTORY INSTRUMENTS.

S.I. No. 249 of 2015



EUROPEAN UNION (REGULATION OF RAILWAYS) REGULATIONS
2015

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2015

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EUROPEAN UNION (REGULATION OF RAILWAYS) REGULATIONS
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I, PASCHAL DONOHOE, Minister for Transport, Tourism and Sport in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) for the purpose of giving effect to Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012¹, hereby make the following regulations:

Part 1

PRELIMINARY AND GENERAL

Citation

1. These Regulations may be cited as the European Union (Regulation of Railways) Regulations 2015.

Interpretation

2. (1) In these Regulations—

“Act of 2005” means Railway Safety Act 2005 (No. 31 of 2005);

“allocation” means the allocation of railway infrastructure capacity by the EFB;

“alternative route” means another route between the same origin and destination where there is substitutability between the two routes for the operation of the freight or passenger service concerned by the railway undertaking;

“applicant” means a railway undertaking or an international grouping of railway undertakings or other persons with a public-service or commercial interest in procuring infrastructure capacity;

“bank” means a recognised bank within the meaning of the Central Bank Acts 1942 to 2013;

“capacity-enhancement plan” means a measure or series of measures with a calendar for their implementation which aim to alleviate the capacity constraints which led to the declaration of an element of infrastructure as ‘congested infrastructure’;

“company” has the same meaning as it has in the Companies Act 2014 (No. 38 of 2014), and where appropriate, includes a co-operative and any other body corporate duly established;

¹OJ No. L343, 14.12.2012, p.32

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 16th June, 2015.*

“congested infrastructure” means an element of infrastructure for which demand for infrastructure capacity cannot be fully satisfied during certain periods even after coordination of the different requests for capacity;

“contractual agreement” means an agreement or, *mutatis mutandis*, an arrangement within the framework of administrative measures;

“coordination” means the process through which the EFB and applicants will attempt to resolve situations in which there are conflicting applications for infrastructure capacity;

“Directive” means Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012¹;

“EFB” means the essential functions body;

“essential functions” means decision-making on train path allocation, including both the definition and the assessment of availability and the allocation of individual train paths, and on infrastructure charging, including determination and collection of the charges in accordance with these Regulations;

“essential functions body” means the body designated under Regulation 5 to undertake the essential functions of the infrastructure manager in the State;

“framework agreement” means a legally binding general agreement under public or private law, setting out the rights and obligations of an applicant and the infrastructure manager in relation to the infrastructure capacity to be allocated and the charges to be levied over a period longer than one working timetable period;

“heavy maintenance” means work that is not carried out routinely as part of day-to-day operations and requires the vehicle to be removed from service;

“Iarnród Éireann infrastructure manager” means the infrastructure manager designated under Regulation 7;

“independent monitoring body” means the Railway Safety Commission appointed under Regulation 9 to monitor a contractual agreement referred to in Regulation 8;

“infrastructure capacity” means the potential to schedule train paths requested for an element of infrastructure for a certain period;

“infrastructure manager” means a body or firm responsible in particular for establishing, managing and maintaining railway infrastructure, including traffic management and control-command and signalling; the functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or firms and in the State is Iarnród Éireann-Irish Rail;

“international freight service” means a transport service where the train crosses at least one border of a Member State; the train may be joined or split and the

different sections may have different origins and destinations, provided that all wagons cross at least one border;

“international passenger service” means a passenger service where the train crosses at least one border of a Member State and where the principal purpose of the service is to carry passengers between stations located in different Member States; the train may be joined or split and the different sections may have different origins and destinations, provided that all carriages cross at least one border;

“licence” means an authorisation issued by the licensing authority to an undertaking, by which its capacity to provide rail transport services as a railway undertaking is recognised; that capacity may be limited to the provision of specific types of services;

“licensee” means the holder of a licence;

“licensing authority” means the body responsible for granting licences within a Member State and, in the State, is the Railway Safety Commission;

“Minister” means Minister for Transport, Tourism and Sport;

“network” means the entire railway infrastructure managed by an infrastructure manager;

“network statement” means the statement under Regulation 11 which sets out in detail the general rules, deadlines, procedures and criteria for charging and capacity-allocation schemes, including such other information as is required to enable applications for infrastructure capacity;

“operator of service facility” means any public or private entity responsible for managing one or more service facilities or supplying one or more services to railway undertakings referred to in paragraphs 2 to 4 of Schedule 2;

“railway infrastructure” means the items listed in Schedule 1;

“Railway Safety Directive” means Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004² (as amended by Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008³, Directive 2008/110/EC of the European Parliament and of the Council of 16 December 2008⁴ and Commission Directive 2009/149/EC of 27 November 2009⁵);

“railway undertaking” means any public or private undertaking licensed according to the Directive, and in the State, licenced according to Part 4, the principal business of which is to provide services for the transport of goods or passengers or both by rail with a requirement that the undertaking ensure traction; this also includes undertakings which provide traction only;

²OJ No. L164, 30.04.2004, p.44

³OJ No. L191, 18.07.2008, p.1

⁴OJ No. L349, 23.12.2008, p.62

⁵OJ No. L313, 29.11.2009,p.65

“regulatory body” means the Railway Safety Commission designated under Regulation 29 to be responsible for regulation of the railway sector in the State;

“Regulations of 2003” means European Communities (Licensing of Railway Undertakings) Regulations 2003 (S.I. No. 537 of 2003) (as amended by European Communities (Licensing of Railway Undertakings) (Amendment) Regulations 2010 (S.I. No. 298 of 2010));

“Regulations of 2013” means European Communities (Railway Safety) Regulations 2013 (S.I. No. 444 of 2013);

“service facility” means the installation, including ground area, building and equipment, which has been specially arranged, as a whole or in part, to allow the supply of one or more services referred to in paragraphs 2 to 4 of Schedule 2;

“viable alternative” means access to another service facility which is economically acceptable to the railway undertaking, and allows it to operate the freight or passenger service concerned;

“working timetable” means the data defining all planned train and rolling-stock movements which will take place on the relevant infrastructure during the period for which it is in force.

(2) A word or expression which is used in these Regulations and which is also used in the Directive, has unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

Repeal and revocations

3. (1) Section 45 of the Public Transport Regulation Act 2009 (No. 37 of 2009) is repealed.

(2) The following are revoked:

- (a) the European Communities (Licensing of Railway Undertakings) Regulations 2003 (S.I. No. 537 of 2003);
- (b) the European Communities (Railway Infrastructure) Regulations 2010 (S.I. No. 55 of 2010);
- (c) the European Communities (Licensing of Railway Undertakings) (Amendment) Regulations 2010 (S.I. No. 298 of 2010).

Scope and application

4. (1) These Regulations apply to the use of the railway network managed and maintained by Iarnród Éireann infrastructure manager for domestic and international rail services and apply in respect of—

- (a) the management of railway infrastructure,

- (b) rail transport activities in the State of the railway undertakings established, or to be established, either in the State or in another Member State,
 - (c) access to the railway infrastructure and services,
 - (d) the principles and procedures to be applied with regard to the setting and collecting of railway infrastructure charges and the allocation of railway infrastructure capacity, and
 - (e) the criteria applicable to the issue, renewal or amendment of licences by the State for railway undertakings established, or to be established, in the State.
- (2) The following are excluded from the application of Part 2:
- (a) local and regional stand-alone networks for passenger services on railway infrastructure;
 - (b) networks intended only for the operation of urban or suburban rail passenger services;
 - (c) regional networks which are used for regional freight services solely by a railway undertaking that is not covered by the scope of subparagraph (e) until capacity on that network is requested by another applicant;
 - (d) privately owned railway infrastructure that exists solely for use by the infrastructure owners for their own freight operations;
 - (e) railway undertakings 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.
- (3) The following are excluded from the application of Part 4:
- (a) railway undertakings which only operate rail passenger services on local and regional stand-alone railway infrastructure;
 - (b) railway undertakings which only operate urban or suburban rail passenger services;
 - (c) railway undertakings which only operate regional rail freight services;
 - (d) railway undertakings which only operate freight services on privately owned railway infrastructure that exists solely for use by the infrastructure owners for their own freight operations.

Part 2

INFRASTRUCTURE MANAGEMENT AND ACCESS

Assignment of essential functions of infrastructure manager to essential functions body

5. (1) For the purposes of these Regulations the essential functions of the infrastructure manager consisting of—

- (a) decision-making on train path allocation, including both the definition and the assessment of availability and the allocation of individual train paths, and
- (b) decision-making on infrastructure charging, including determination and collection of the charges,

are assigned to an essential functions body (EFB).

(2) Córas Iompair Éireann is the essential functions body and shall perform the functions of essential functions body under these Regulations.

(3) The EFB shall carry out the essential functions of the infrastructure manager independently of any railway undertaking or applicant so as to ensure equitable and non-discriminatory access to infrastructure for railway applicants.

(4) The EFB shall not itself provide any rail transport services and shall comply with the requirements for management independence for the purposes of these Regulations.

(5) The EFB, in carrying out the essential functions of the infrastructure manager, may request Iarnród Éireann infrastructure manager to perform any task and to provide any information required for the EFB to carry out its functions under these Regulations.

Essential functions charge

6. (1) Subject to paragraph (2), for the purposes of meeting expenses properly incurred by the EFB in the discharge of its functions under these Regulations, the EFB may impose a charge (in these Regulations referred to as an “essential functions charge”) to be paid each year by a railway infrastructure manager to which these Regulations apply.

(2) The EFB shall not impose an essential functions charge before 31 December 2015.

(3) Where the EFB decides to impose an essential functions charge it shall inform the infrastructure manager of the following—

- (a) the amount of the essential functions charge payable,
- (b) the collection and recovery of the essential functions charge,

- (c) such other matters as are necessary or incidental to the procurement of the payment of the essential functions charge, and
- (d) the period within which the infrastructure manager may make representations to the EFB in relation to the essential functions charge.

(4) The essential functions charge shall be payable to the EFB at such time and at such level as provided under paragraph (1) after the period of time allowed to make representations.

(5) Any increase in the essential functions charge may only take effect in the year after the year in which the increase is made.

(6) Essential functions charges payable under this Regulation shall not be refundable.

(7) The EFB may recover, as a simple contract debt in any court of competent jurisdiction, from any person by whom it is payable any amount of an essential functions charge due and owing to it under this Regulation.

Infrastructure manager

7. (1) Subject to Regulation 5, Iarnród Éireann-Irish Rail is the infrastructure manager of the railway network in the State to which these Regulations apply (referred to in these Regulations as “Iarnród Éireann infrastructure manager”) and shall carry out the functions of the infrastructure manager in accordance with these Regulations.

(2) Iarnród Éireann infrastructure manager shall, while respecting the charging and allocation framework under these Regulations, be responsible for its own management, administration and internal control.

(3) Iarnród Éireann infrastructure manager and the EFB shall liaise with the infrastructure managers of the other Member States on all relevant matters where appropriate.

(4) Iarnród Éireann infrastructure manager and the EFB shall co-operate with the infrastructure managers of the other Member States, as set out in Regulation 26, to ensure the efficient operation of train services which cross more than one infrastructure network.

(5) Iarnród Éireann infrastructure manager and the EFB shall act in a fair and non-discriminatory manner at all times in performing their functions under these Regulations and respect the commercial confidentiality of the information supplied to them.

(6) Iarnród Éireann infrastructure manager shall comply with any request of the EFB in carrying out the essential functions of the infrastructure manager and with any request for information required for the EFB to carry out its functions under these Regulations.

(7) Iarnród Éireann infrastructure manager and the EFB shall comply with any request of the regulatory body and any request for information required for the regulatory body to perform its functions under these Regulations.

Infrastructure management contract

8. (1) The Minister is the competent authority (in these Regulations referred to as “competent authority”) for the purpose of these Regulations.

(2) A contractual agreement, fulfilling the basic principles and parameters set out in Schedule 3, shall be concluded between the competent authority and the infrastructure manager, Iarnród Éireann- Irish Rail.

(3) Iarnród Éireann infrastructure manager shall ensure consistency between the provisions of the contractual agreement and the business plan.

(4) The competent authority shall agree in advance the contract terms and structure of the payments to provide funding to Iarnród Éireann infrastructure manager to cover the whole of the contract period which shall be not less than 5 years.

(5) Applicants and, upon their request, potential applicants shall be informed by the competent authority and Iarnród Éireann infrastructure manager of the proposed contractual agreement and given the opportunity to express their views on the content of the contractual agreement before it is signed.

(6) The contractual agreement shall be published by Iarnród Éireann infrastructure manager within 1 month of concluding it.

(7) Iarnród Éireann infrastructure manager shall ensure consistency between the provisions of the contractual agreement and the business plan.

(8) The contractual agreement shall be monitored by the independent monitoring body.

(9) Any contractual agreement concluded between the Minister as competent authority and the Iarnród Éireann infrastructure manager under section 45 of the Public Transport Regulation Act 2009 (No. 37 of 2009) is deemed to have been done under this Regulation and these Regulations apply to it.

Independent monitoring body

9. (1) The Railway Safety Commission is appointed as independent monitoring body to monitor the performance of the infrastructure manager in regard to its obligations under the contractual agreement referred to in Regulation 8.

(2) The functions of the independent monitoring body are:

(a) to act as the independent body to monitor the performance of the infrastructure manager in respect of its obligations under the contractual agreement;

- (b) to arbitrate where a dispute arises between the parties as to the requirements for compliance with the contractual agreement;
- (c) to approve the performance monitoring system developed by the infrastructure manager;
- (d) to advise the Minister of—
 - (i) any persistent failure-to-perform trends of the infrastructure manager, and
 - (ii) details of any performance improvement plan including any decision regarding any changes to the prioritisation of works.

(3) The independent monitoring body shall provide the Minister with reports on its monitoring of the performance of the infrastructure manager in accordance with the timeframes set out in the contractual agreement.

(4) The independent monitoring body may at any time, with the agreement of the infrastructure manager, undertake a physical inspection of the works undertaken in accordance with the contractual agreement for the purposes of verifying compliance with the requirements of the contractual agreement.

Railway asset register

10. (1) Iarnród Éireann infrastructure manager shall, develop and maintain a register of the railway assets (in this Regulation referred to as “the railway asset register”) for which it is responsible for managing.

(2) The railway asset register shall be used for the purposes of assessment by Iarnród Éireann infrastructure manager of the financing needed to repair or replace the assets and the register, together with the details of expenditure on renewal and upgrading of the infrastructure which must accompany it, shall be used for the purposes of the infrastructure manager’s business plan under Regulation 28 and to ensure consistency with the contractual agreement.

Network statement

11. (1) (a) Iarnród Éireann infrastructure manager shall, after consultation with interested parties, develop and publish a network statement, which shall be available for sale for a fee that does not exceed the cost of publishing the statement.

(b) A network statement shall be published in the English and Irish languages.

(c) The content of a network statement shall be made available free of charge in electronic format on the website of the infrastructure manager and, if applicable, accessible through a common web portal in cooperation with other infrastructure managers.

(2) A network statement, containing the content that is laid down in Schedule 4, shall—

- (a) set out the nature of the infrastructure which is available to railway undertakings;
- (b) contain information setting out the conditions for access to the relevant railway infrastructure;
- (c) contain information setting out the conditions for access to service facilities connected to the network of the infrastructure manager and for the supply of services in these facilities or indicate a website where such information is made available free of charge in electronic format.

(3) Iarnród Éireann infrastructure manager shall keep and maintain a network statement and the statement shall be kept up to date and amended as necessary.

(4) Iarnród Éireann infrastructure manager shall ensure the publication of a network statement no less than 4 months in advance of any deadline it may set for requests for infrastructure capacity from railway undertakings.

(5) Notwithstanding the requirement for Iarnród Éireann infrastructure manager to maintain the network statement under this Regulation, Iarnród Éireann infrastructure manager and the EFB shall, at all times, be able to inform any interested party of infrastructure capacity which has been allocated to user railway undertakings, including the unavailability of infrastructure capacity due to unscheduled maintenance works.

(6) A network statement shall set out the infrastructure capacity that has been designated specialised infrastructure under Regulation 15.

(7) A network statement shall set out the procedures to be followed and the criteria to be used where infrastructure is declared to be congested under Regulation 18.

Access to railway infrastructure- rail freight services and international passenger services

12. (1) Any railway undertaking shall be granted the right of access, to the State's railway infrastructure for the purpose of operating an international passenger service. Railway undertakings shall, in the course of an international passenger service, have the right to pick up passengers at any railway station in the State located on the international route and set them down at another railway station in the State, subject to the determination regarding the purpose of the proposed service by the regulatory body under Regulation 33. That right shall include access to infrastructure connecting service facilities referred to in paragraph 2 of Schedule 2.

(2) Any railway undertaking shall be granted the right of access, on equitable, non-discriminatory and transparent conditions, to the State's railway infrastructure for the purpose of operating all types of rail freight services. That right shall include access to infrastructure connecting maritime and inland ports and other service facilities referred to in paragraph 2 of Schedule 2, and to infrastructure serving, or potentially serving, more than one final customer.

(3) Access rights granted under this Regulation may only be granted to railway undertakings meeting the necessary safety requirements of the Regulations of 2013 and the Act of 2005, where applicable, and the licensing requirements set out in Part 4 or, in another Member State, the corresponding requirements.

Applications for infrastructure capacity

13. (1) An application for the allocation of railway infrastructure capacity may be submitted to the EFB for each timetable period by a railway undertaking established, or to be established, in the State or another Member State.

(2) An applicant who is party to a framework agreement under Regulation 21 shall apply for infrastructure capacity during any timetabling period in accordance with, and within the duration of, that agreement.

(3) An application for the allocation of railway infrastructure capacity shall only be considered if it is—

(a) in accordance with such form as the EFB may from time to time direct, and

(b) accompanied by—

(i) proof that the applicant is entitled to apply under paragraph (1) for infrastructure capacity in the State,

(ii) a safety certificate issued to the applicant under the Regulations of 2013 or, in another Member State, the corresponding requirements, as applicable,

(iii) a bond, in favour of the infrastructure manager, that is guaranteed by a bank and that meets the requirements of paragraph (4) or, with the infrastructure manager's approval, proof of an equivalent arrangement that meets those requirements, and

(iv) an application fee of €750.

(4) The bond or equivalent arrangement referred to in paragraph (3) shall—

(a) be entered into by the applicant, and

(b) be for an amount equal in value to 5 per cent of the total cost to the applicant of providing the services for which the allocation is required, established under realistic assumptions, for a period of 12 months from the date of allocation.

(5) The EFB and Iarnród Éireann infrastructure manager shall respect the commercial confidentiality of information provided by any applicant.

(6) If an applicant regularly fails to use a train path allocated to the applicant under these Regulations, the proceeds of the bond or other arrangement in an amount not exceeding—

- (a) the amount certified by the EFB as the cost of processing the application, and
- (b) the amount certified by the EFB as the amount of any subsequent loss of earnings by the infrastructure manager due to the non-use of that infrastructure,

shall be payable, on the EFB's written demand, to the EFB.

(7) The EFB may—

- (a) seek further particulars of any matter that appears to it to be relevant to its consideration of an application, and
- (b) require those particulars to be given by means of an affidavit or statutory declaration or in such other manner as the EFB may direct.

(8) When a railway undertaking intends to request infrastructure capacity with a view to operating an international passenger service, it shall inform the regulatory body, the EFB and the infrastructure managers concerned.

(9) An applicant shall comply with any request for information required for the regulatory body to carry out its functions, including decision-making concerning an application for international passenger rail services under Regulation 33.

Access to services

14. (1) Any railway undertaking shall be entitled to the minimum access package set out in paragraph 1 of Schedule 2 and access to service facilities described in paragraph 2 of Schedule 2 and can make requests to the EFB or an operator of service facilities in that regard.

(2) The EFB shall ensure that the minimum access package set out in paragraph 1 of Schedule 2 is supplied to all railway undertakings by the infrastructure manager in a fully transparent and non-discriminatory manner.

(3) Operators of service facilities shall supply in a non-discriminatory manner to all railway undertakings access, including track access, to the facilities referred to in paragraph 2 of Schedule 2, and to the services supplied in these facilities.

(4) With regard to access to, and supply of service facilities referred to in paragraph 2 of Schedule 2, the EFB shall respond within a reasonable time set by the regulatory body to a request made under paragraph (1) by a railway undertaking.

(5) The EFB may only refuse a request by a railway undertaking for access to, and supply of service facilities referred to in paragraph 2 of Schedule 2, if there are viable alternatives allowing the railway undertaking to operate the freight or passenger service concerned on the same or alternative routes under economically acceptable conditions.

(6) The EFB shall justify in writing any decision of refusal and indicate viable alternatives in other facilities.

(7) Where an operator of the service facility referred to in paragraph 2 of Schedule 2 encounters conflicts between different requests, the operator shall attempt to meet all requests in so far as possible. If no viable alternative is available, and it is not possible to accommodate all requests for capacity for the relevant facility on the basis of demonstrated needs, the applicant may complain to the regulatory body which shall examine the case and take action, where appropriate, to ensure that an appropriate part of the capacity is granted to that applicant.

(8) Where a service facility referred to in paragraph 2 of Schedule 2 has not been in use for at least 2 consecutive years and interest by railway undertakings for access to this facility has been expressed to the operator of that service facility on the basis of demonstrated needs, its owner shall publicise the operation of the facility as being for lease or rent as a rail service facility, as a whole or in part, unless the operator of that service facility demonstrates that an ongoing process of reconversion prevents its use by any railway undertaking.

(9) The EFB is not obliged to provide the services referred to in paragraphs 3 and 4 of Schedule 2.

(10) Where any of the services referred to in paragraph 3 of Schedule 2 are provided as additional services upon request from a railway undertaking, those additional services shall be supplied to railway undertakings in a non-discriminatory manner.

(11) Iarnród Éireann infrastructure manager may conclude agreements with railway undertakings relating to the services referred to in the preceding paragraphs of this Regulation.

(12) Infrastructure capacity shall, without prejudice to Regulation 15, be considered to be available for the use of all types of service which conform to the characteristics necessary for operation on the train path.

(13) Access for the use of railway infrastructure will be subject to charges in accordance with these Regulations.

(14) Information on charges concerning the supply of the services referred to in paragraphs 2, 3 and 4 of Schedule 2 shall be provided to Iarnród Éireann infrastructure manager for the purposes of Regulation 11 to be included in the network statement and it shall be indicated on a website where such information is made available free of charge in electronic format.

Specialised infrastructure

15. (1) (a) Without prejudice to subparagraph (b), infrastructure capacity shall be considered to be available for the use of all types of service which conform to the characteristics necessary for operation on the train path.

(b) Where there are suitable alternative routes, the EFB may, after consultation with interested parties, designate a specific train path or part of a train path as special infrastructure capacity for use by specified types of traffic and where such designation has occurred, the EFB may give priority to this type of traffic when allocating infrastructure capacity. However, such designation shall not prevent the use of such infrastructure by other types of traffic when capacity is available.

(2) Where infrastructure has been designated under paragraph (1)(b), this shall be described in the network statement of the infrastructure manager.

Scheduling

16. (1) The EFB, Iarnród Éireann infrastructure manager and applicants for infrastructure capacity shall adhere to the schedule set out in the network statement, referred to in paragraph 3 of Schedule 4, for the application and allocation processes.

(2) The EFB shall, as far as is possible, meet all requests for infrastructure capacity including requests for train paths crossing more than one network, and as far as is possible take account of all constraints on applicants, including the economic effect on their business.

(3) The EFB shall consult with interested parties, including other infrastructure managers in the case of international train paths, about the draft working timetable and allow them 1 month to present their views. Interested parties shall include all those who have requested infrastructure capacity as well as other parties who wish to have the opportunity to comment on how the draft working timetable may affect their ability to procure rail services during the working timetable period.

(4) The draft working timetable shall take account of the capacity requested, provided that the requested train paths enable railway traffic to be operated in accordance with technical and safety regulations.

(5) The EFB, in order to improve the allocation of capacity, may offer applicants capacity that does not essentially differ from the capacity they have requested. Capacity may also be left unallocated, provided that reserve capacity is needed for the working timetable period pursuant to a designation of capacity under Regulation 13.

(6) The EFB shall take appropriate measures to deal with any concerns expressed by interested parties.

(7) The EFB may, within the working timetable, reserve infrastructure capacity to enable it to respond rapidly to foreseeable *ad hoc* requests for individual train paths made under Regulation 22.

(8) The EFB shall ensure that all requests for infrastructure capacity to enable maintenance of the infrastructure to be carried out shall be included during the scheduling process.

(9) The EFB shall take due account of the effect of infrastructure capacity reserved for scheduled track maintenance on applicants.

(10) The EFB shall inform, as soon as possible, interested parties about the unavailability of infrastructure capacity due to unscheduled maintenance work.

Coordination process

17. (1) During the scheduling process set out in Regulation 13, in the event that the EFB encounters conflicts between different requests for infrastructure capacity made by applicants, it shall attempt, through coordination of the requests, to ensure the best possible matching of the available infrastructure capacity to the requests made.

(2) Where a situation requiring the coordination process arises, the EFB shall have the right, within reasonable limits, to propose infrastructure capacity that differs from that which was requested by the applicants.

(3) For the purposes of paragraph (1) the EFB shall attempt, through consultation with the appropriate applicants, to resolve any conflicts. Such consultation shall be based on the disclosure 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 (2), and
- (d) full details of the criteria being used in the capacity-allocation process.

(4) In accordance with the requirement under Regulation 13(5) to respect the commercial confidentiality of information provided, any information disclosed under paragraph (3) shall be provided without disclosing the identity of other applicants, unless applicants concerned have agreed to such disclosure.

(5) The principles governing the coordination process shall be set out in the network statement and, these shall, in particular, reflect the difficulty of arranging international train paths and the effect that modification may have on other infrastructure managers.

(6) Where requests for infrastructure capacity cannot be satisfied without coordination, the EFB shall attempt to accommodate all requests through coordination.

(7) Without prejudice to the appeals and complaints procedures provided under Regulations 30 and 31, in the event of disputes relating to the allocation of infrastructure capacity, a dispute resolution process, the details of which must be set out in the network statement, shall be available to the EFB and applicants in order to resolve such disputes promptly.

(8) If the disputes resolution process under paragraph (7) is applied, a decision shall be reached within a time limit of 10 working days from commencement of the dispute resolution process.

Declaration by essential functions body concerning congested infrastructure

18. (1) The EFB shall immediately declare certain infrastructure to be congested—

- (a) if, following a coordination process under Regulation 17 or a dispute resolution process under Regulation 17(7), it is not possible for requests for certain infrastructure capacity by applicants to be adequately satisfied, or
- (b) if, it is the view of the EFB, subject to a capacity analysis, that certain infrastructure will suffer from insufficient capacity during the period of the working timetable.

(2) In the case of infrastructure that has been declared congested under paragraph (1)(a), the EFB shall carry out a capacity analysis in accordance with paragraph (3) to determine current and future restrictions on infrastructure capacity unless a capacity-enhancement plan as referred to in paragraph (4) is already being implemented.

- (3) (a) A capacity analysis shall be carried out with the objective to determine the constraints on infrastructure capacity which prevent requests for capacity from being adequately met, and to propose methods of enabling additional requests to be satisfied. The capacity analysis shall identify the reasons for the congestion and what measures might be taken in the short and medium term to ease the congestion.
- (b) A capacity analysis shall consider the infrastructure, the operating procedures, the nature of the different services operating and the effect of all these factors on infrastructure capacity. Measures to be considered shall include, in particular, rerouting services, retiming services, speed alterations and infrastructure improvements.
- (c) A capacity analysis required under paragraph (2) shall be completed within 6 months of the declaration under paragraph (1)(a).
- (4) (a) The infrastructure manager shall, within 6 months of completion of a capacity analysis under paragraph (3), produce an infrastructure capacity-enhancement plan with respect to infrastructure which under this Regulation has been declared by the EFB to be congested.
- (b) A capacity-enhancement plan shall be developed after consultation with users of the relevant congested infrastructure and shall identify:
 - (i) the reasons for the congestion;
 - (ii) the likely future development of traffic;

- (iii) the constraints on infrastructure development;
 - (iv) the options and costs for capacity enhancement, including likely changes to access charges.
- (c) On the basis of a cost benefit analysis of the possible measures identified, the capacity-enhancement plan shall also determine the action to be taken to enhance infrastructure capacity, including a timetable for implementing the measures.
- (5) Subject to paragraph (4), the EFB shall cease to levy any infrastructure charge for the relevant infrastructure under Regulation 25 in cases where—
- (a) a capacity-enhancement plan is not produced, or
 - (b) progress has not been made on the actions identified in the capacity-enhancement plan.
- (6) The EFB may, subject to the approval of the regulatory body, continue to levy an infrastructure charge if—
- (a) the capacity-enhancement plan cannot be realised for reasons beyond its control, or
 - (b) the options available are not economically or financially viable.

Priority criteria for allocation of infrastructure capacity

19. (1) The EFB may apply priority criteria to the process of allocation of infrastructure capacity under the following circumstances—

- (a) when infrastructure charges that include a charge which reflects scarcity of capacity of the identifiable section of the infrastructure during periods of congestion have not been levied or have not achieved a satisfactory result, and
 - (b) the infrastructure has been declared to be congested.
- (2) Priority criteria shall take account of the importance of a service to society, relative to any other service which will consequently be excluded in this State or as a consequence in another Member State, and, in particular, have regard to the following—
- (a) the development of adequate transport services in the State,
 - (b) public service obligations,
 - (c) the promotion of the development of rail freight and international freight services, and
 - (d) Regulation 15.

(3) Iarnród Éireann infrastructure manager may be compensated, through the contractual agreement under Regulation 8, for any loss of revenue incurred through the requirement to allocate a given infrastructure capacity to certain services under paragraph (2).

(4) The procedure to be followed and the criteria to be used where infrastructure capacity has been declared to be congested by the EFB under Regulation 18 shall be set out in the network statement.

(5) Iarnród Éireann infrastructure manager may specify in the network statement conditions whereby the EFB will take account of previous levels of utilisation of train paths in determining priorities for the allocation process under Regulation 20.

Allocation of infrastructure capacity

20. (1) The EFB shall adhere to the schedule for capacity allocation set out in Schedule 5 and, having taken into account the comments of interested parties under Regulation 16 and taking into account the needs of passenger and freight traffic, infrastructure maintenance and the efficient use of the railway network, allocate infrastructure capacity to an applicant for a maximum duration of one working timetable period—

- (a) on the basis of the draft timetable,
- (b) on a fair and non-discriminatory basis, and
- (c) subject to the conditions set out in this Regulation.

(2) Railway infrastructure capacity may only be allocated by the EFB to a railway undertaking—

- (a) entitled to make an application under Regulation 13, and
- (b) to whom a safety certificate has been issued, in the State, under Regulation 5 of the Regulations of 2013 or has been issued, in another Member State, pursuant to the corresponding requirements for the purposes of the Railway Safety Directive.

(3) The EFB shall—

- (a) as far as possible meet all requests for infrastructure capacity, including requests for train paths crossing more than one network in consultation with other infrastructure managers, and
- (b) agree with any other relevant infrastructure managers concerned which international train paths are to be included in the working timetable, before commencing consultation on the draft working timetable and adjustments shall only be made if absolutely necessary.

(4) Subject to paragraph (1), the EFB may not refuse an application for a particular train path if there is no other application for all or part of the path.

(5) An allocation of railway infrastructure capacity shall entitle the holder to operate trains over the train paths in accordance with the conditions set out in the allocation.

(6) The EFB may attach to any allocation of infrastructure capacity such conditions as it considers appropriate to ensure that the holder of the allocation—

- (a) operates the services specified in his or her allocation,
- (b) does not interfere with the rights of holders of other allocations or the rights of operators of services not covered by these Regulations, and
- (c) does not operate the services specified in his or her allocation in an unsafe manner.

(7) If more than one application is received for all or part of a particular train path, the EFB shall endeavour, by suggesting suitable amendments to the applicants, to reach agreement among the applicants which would enable some or all of the applications to be granted.

(8) Subject to paragraph (9), if it is not possible to reach agreement with all of the applicants, even though the applicants have not unreasonably refused to agree to a modification to their applications, the EFB shall—

- (a) allocate the train path to the applicant, if any, who has the right to use the path, or a substantially similar path, at the time of the application, if at the end of the current allocation period the applicant will not have already enjoyed the use of the path for 60 or more consecutive months, or
- (b) allocate a train path to one of the applicants on a non-discriminatory basis.

(9) Notwithstanding paragraph (8), the EFB may refuse any application if, in its opinion, the applicant has unreasonably refused to agree to a modification to its application proposed by the EFB under paragraph (7).

(10) The decision of the EFB concerning an application for railway infrastructure capacity (including, in the case of a refusal, the reason or reasons for the refusal) shall be communicated by written notice to the applicant.

(11) If an application is refused on the grounds of insufficient railway infrastructure capacity, the written notice shall include the following information—

- (a) that the applicant is entitled to request the EFB to reconsider the application at the next timetable adjustment for the routes concerned,
- (b) the date when those adjustments would be considered, and
- (c) the time allowed and the procedure for making the request.

(12) Once infrastructure capacity has been allocated by the EFB to a railway undertaking it may not be transferred by that railway undertaking to another undertaking or service provider.

Agreement between infrastructure manager and railway undertaking

21. (1) Railway undertakings to which railway infrastructure capacity is allocated in accordance with these Regulations, in particular Regulation 20, shall conclude a framework agreement with Iarnród Éireann infrastructure manager covering the necessary administrative, technical and financial matters to regulate traffic control and safety issues concerning the services to be provided by them.

(2) An agreement referred to in paragraph (1)—

(a) shall specify—

(i) details relating to the provision of services as outlined in Regulation 14,

(ii) details relating to the train path only in so far as to describe how it will meet the legitimate commercial needs of the applicant, and

(iii) the characteristics of the infrastructure capacity as required by and offered to the applicant over a period of time exceeding 1 working timetable period,

(b) shall in principle cover a period of 5 years, and shall be renewable for periods equal to the original duration; however, Iarnród Éireann infrastructure manager may agree a shorter or longer period in specific cases; and any period longer than 5 years shall be justified by the existence of commercial contracts, specialised investments or risks,

(c) shall allow for amendment or limitation of its terms to enable better use to be made of the railway infrastructure,

(d) shall not preclude the use of the relevant infrastructure by other applicants or service providers, and

(e) may contain penalties with regard to modifications or termination of the agreement.

(3) The terms and conditions of an agreement concluded under paragraph (1) shall be non-discriminatory and transparent between railway undertakings or between railway undertakings and infrastructure manager as a provider of rail services.

(4) Iarnród Éireann infrastructure manager, in entering into a contract with a railway undertaking concerning rail capacity allocation rights under these Regulations, shall operate its control and safety systems so as to take into account the services operated in exercise of such rights.

(5) While respecting commercial confidentiality, the general nature of each agreement between Iarnród Éireann infrastructure manager and a railway undertaking shall be made available by the infrastructure manager to any interested party.

Ad hoc requests for infrastructure capacity

22. (1) Applicants may make *ad hoc* requests in writing to the EFB for individual train paths.

(2) The EFB shall respond to *ad hoc* requests for individual train paths within 5 days of the request being received by the EFB.

(3) Subject to the requirements of these Regulations, the EFB shall allocate the train path requested if there is sufficient reserved infrastructure capacity to meet the *ad hoc* request.

(4) To facilitate *ad hoc* requests under this Regulation, the EFB shall ensure that information on available spare infrastructure capacity on the railway network is made available to all applicants who may wish to use this capacity.

(5) The EFB may, subject to evaluation of need, keep reserve infrastructure capacity available within the final scheduled working timetables for the purpose of responding to *ad hoc* requests for infrastructure capacity or in cases of infrastructure that has been declared congested under Regulation 18.

(6) Notwithstanding Regulations 20 and 36, the EFB may, on request, allocate train paths to operators of heritage railway vehicles who hold a safety management certificate issued under section 46(1)(a) of the Act of 2005 and may charge a nominal charge in respect of the allocation of infrastructure capacity to operators of such vehicles that run on the railway network in the State to which these Regulations apply.

Monitoring use of allocated train paths

23. (1) If the EFB considers that a service being provided on foot of an allocation of railway infrastructure capacity under these Regulations does not meet the requirements under which the allocation was made, it may give notice in writing to the applicant to whom the allocation was made directing that applicant to bring the service up to the required standard within the time limit specified in the notice.

(2) If there is a failure to comply with a notice given under paragraph (1) within the time limit specified in the notice, the EFB may suspend or withdraw the allocation.

(3) Where there has been a failure to use a train path that has been allocated, the EFB may decide not to withdraw capacity if the failure to use it is due to reasons beyond the control of the applicant to whom the allocation was made.

(4) The EFB may withdraw infrastructure capacity in full or in part on a part of the railway network which is provisionally out of service due to a technical failure, accident or some other incident on the rail network. In such cases the

EFB may offer the operator using that capacity an alternative train path or train paths.

(5) In respect of infrastructure that has been declared congested by the EFB under Regulation 17, the EFB may require the surrender of a train path which, over a period of at least one month, has been used less than a prescribed threshold quota for that infrastructure, unless this was due to non-economic reasons beyond the applicant's control.

(6) The threshold quota referred to in paragraph (5) shall be specified in the network statement.

Measures to be taken in event of disturbance

24. (1) In the event of disturbance to train movements and services on train paths allocated in accordance with Regulation 20 caused by technical failure, accident or some other incident, Iarnród Éireann infrastructure manager shall take all the necessary steps to restore the situation to normal to ensure that train movements can be resumed as soon as possible.

(2) Iarnród Éireann infrastructure manager shall draw up a contingency plan listing the various bodies to be informed in the event of serious incidents or serious disturbance to train movements.

(3) In an emergency and, where absolutely necessary, on account of a breakdown making the infrastructure temporarily unusable, the train paths allocated may be withdrawn without warning for as long as is necessary to repair the system.

(4) Where the disturbance to train movements under paragraph (1) is caused by an accident or incident, including serious accidents, accidents or incidents to which the European Union (Railway Safety) (Reporting and Investigation of Serious Accidents, Accidents and Incidents) Regulations 2014 (S.I. No. 258 of 2014) applies, the obligation on Iarnród Éireann infrastructure manager to ensure that all necessary steps are taken to facilitate the early resumption of train movements and services is without prejudice to any other obligations on the infrastructure manager or any other person under the laws of the State or European Union law to facilitate the proper investigation of accidents and incidents.

Infrastructure charge

25. (1) The EFB shall impose a charge (in these Regulations referred to as an "infrastructure charge") on railway undertakings for the use of the railway infrastructure. The infrastructure charge shall be payable to the EFB and shall be used to fund infrastructure maintenance and the operations of Iarnród Éireann infrastructure manager.

(2) The amount of the infrastructure charge shall be determined by the EFB and in accordance with this Regulation. The amount shall comprise a basic charge and any other charges connected with the infrastructure charge.

- (3) The infrastructure charge shall take account of the services provided by Iarnród Éireann infrastructure manager under Regulation 14.
- (4) The EFB shall not discriminate in the charging of infrastructure charges for services of an equivalent nature.
- (5) The following principles of charging shall apply to the infrastructure charges and, in particular, to the calculation of the charges:
 - (a) the infrastructure charge for the minimum access package and access to service facilities referred to in Schedule 2 shall be set at the cost that is directly incurred as a result of operating the train service;
 - (b) where there is only one supplier of services, the infrastructure charge for the services described in paragraphs 3 and 4 of Schedule 2 shall relate to the cost of providing the service, calculated on the basis of the actual level of use;
 - (c) the infrastructure charge for the services referred to in paragraph 2 of Schedule 2 shall take account of the competitive situation pertaining in rail transport.
- (6) In determining the amount of the infrastructure charge, the infrastructure charges shall be related to the costs attributable to the services and account shall be taken of the following factors—
 - (a) the nature of the service,
 - (b) the frequency of the service,
 - (c) the time of the service,
 - (d) the prevailing market situation,
 - (e) the type and degree of wear and tear of the infrastructure,
 - (f) the cost of infrastructure maintenance,
 - (g) scarcity of capacity, and
 - (h) progress under any relevant capacity-enhancement plan.
- (7) The EFB shall ensure that its charging scheme is based on the same principles over the entire network.
- (8) Charges may be levied for capacity used for the purpose of infrastructure maintenance. Such charges shall not exceed the net revenue loss to Iarnród Éireann infrastructure manager caused by the maintenance.
- (9) The infrastructure charges referred to in this Regulation may include a charge which reflects the scarcity of capacity of an identifiable section of the infrastructure during periods of congestion.

(10) An infrastructure charging scheme shall encourage railway undertakings and Iarnród Éireann infrastructure manager to minimise disruption and improve performance of the railway network through a performance scheme which may include penalties for actions which disrupt the operation of the railway network, compensation for railway undertakings which suffer from disruption and bonuses that reward better-than-planned performance. The basic principles of the performance scheme as listed in paragraph 2 of Schedule 6 shall apply throughout the railway network.

(11) Infrastructure charges payable under this Regulation shall not be refundable.

(12) The EFB shall ensure that the charges actually applied comply with the rules laid down in the network statement.

Co-operation of infrastructure manager with other infrastructure managers

26. (1) In regard to the operation of train services which cross more than one infrastructure network of the rail system within the European Union, the infrastructure manager and the EFB shall co-operate with the infrastructure managers of any other Member State concerned to enable the efficient creation and allocation of infrastructure capacity and to enable the application of efficient charge schemes for the operation of such train services.

(2) The infrastructure manager and the EFB shall, in co-operation with the infrastructure managers of the other Member States, assess the need for, and if necessary propose and organise international train paths to facilitate the operation of freight services which are subject to an *ad hoc* request under Regulation 22.

Separation of accounts

27. (1) Railway undertakings and infrastructure managers including any railway undertaking which is also the infrastructure manager shall keep and publish, annually, separate profit and loss accounts and balance sheets, on the one hand, for business relating to the provision of rail transport services by railway undertakings, and, on the other, for business relating to the management and maintenance of the railway infrastructure.

(2) Any railway undertaking or infrastructure manager to which paragraph (1) applies shall ensure that state aid granted to that railway undertaking or infrastructure manager for the provision of—

- (a) transport services is not transferred for use in the management of the railway infrastructure, and
- (b) railway infrastructure is not transferred for use in the provision of transport services,

and the accounts of such a railway undertaking or infrastructure manager shall be maintained so as to reflect these prohibitions.

(3) For the purposes of these Regulations, any railway undertaking shall keep and publish, annually, separate profit and loss accounts and, either, balance sheets or statements of assets and liabilities, on the one hand, in respect of the provision of rail freight transport services and, on the other, in respect of activities relating to the provision of passenger transport services. Any public funds paid for activities relating to the provision of passenger transport services as public-service remits must be shown separately in the relevant accounts. Such funds shall not be transferred for use in activities relating to the provision of other transport services or any other business and the accounts of all be maintained so as to reflect this prohibition.

(4) For the purposes of assessments by the regulatory body under Part 3, the infrastructure manager, an operator of service facilities and any railway undertaking or other entity performing or integrating different types of rail transport or infrastructure management as referred to in these Regulations, shall provide to the regulatory body upon its request all or part of the accounting information listed in Schedule 7 with a sufficient level of detail as deemed necessary and proportionate.

Business plan of infrastructure manager

28. (1) The infrastructure manager shall draw up and adopt a business plan which shall be designed to ensure optimal and efficient use, provision and development of the infrastructure while ensuring financial balance and providing means for these objectives to be met.

(2) The infrastructure manager shall consult with relevant parties in the formulation of this business plan including the Minister, the regulatory body and the National Transport Authority.

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

(4) A business plan shall be submitted to the Minister for approval.

(5) A business plan may be reviewed from time to time by the infrastructure manager or the Minister.

Part 3

REGULATORY BODY AND FUNCTIONS

Regulatory body

29. (1) The Railway Safety Commission is designated as the regulatory body for the purpose of these Regulations and the Directive.

(2) The regulatory body shall carry out the functions of the regulatory body for the purpose of these Regulations, in particular with regard to ensuring non-discriminatory access to the railway market, including—

- (a) decisions concerning appeals or complaints under Regulations 30 and 31, respectively,
- (b) monitoring competition in the rail services market in the State including the rail freight transport market for the purposes of these Regulations,
- (c) decisions concerning the principal purpose of a proposed international passenger rail service on a public service obligation route and any limitations on the right of access for such service under Regulation 33, including establishment and publishing of pre-determined criteria in that regard,
- (d) ensuring that the charges set by the infrastructure manager comply with these Regulations and are non-discriminatory,
- (e) supervision of any negotiations between the infrastructure manager and a railway undertaking concerning the level of infrastructure charges and intervening if such negotiations are likely to contravene the requirements of these Regulations, and
- (f) co-operation with the regulatory bodies in other Member States.

(3) The regulatory body shall be independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant.

(4) The regulatory body shall have the necessary human and material resources to undertake its functions under these Regulations and to ensure that it is staffed and managed in a way that guarantees its independence.

(5) The regulatory body may carry out audits or initiate external audits with infrastructure managers, operators of service facilities and, where relevant, railway undertakings, to verify compliance with accounting separation provisions under Regulation 27.

(6) For the purposes of audits under paragraph (5) the regulatory body may request any relevant information and, in particular, may require the infrastructure manager, operators of service facilities and any railway undertaking or other entity performing or integrating different types of rail transport or infrastructure management to provide all or part of the accounting information listed in Schedule 7 with a sufficient level of detail as deemed necessary and proportionate.

(7) 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 the National Transport Authority, the Minister and the Minister for Public Expenditure and Reform.

- (8) The regulatory body shall—
- (a) exchange information with regulatory bodies in other Member States about its work and decision-making principles and practice and, in particular, exchange information on procedures and on any problems arising in the operation of these Regulations,
 - (b) co-operate with the regulatory bodies in other Member States for the purpose of coordinating regulatory body decision-making principles across the European Union and for this purpose, participate in a network that convenes at regular intervals,
 - (c) co-operate closely with the regulatory bodies in other Member States for the purposes of mutual assistance in their market monitoring tasks and handling complaints and investigations,
 - (d) develop, with the regulatory bodies in other Member States, common principles and practices for making the decisions for which it is empowered under these Regulations, and
 - (e) regularly, and, in any case, at least every 2 years, consult representatives of users of the rail freight and passenger transport services, to take into account their views on the rail market.
- (9) (a) The regulatory body shall, in the case of a complaint or on its own initiative investigate on issues of access or charging relating to an international train path, as well as the framework of monitoring competition on the market related to international rail transport services, consult the regulatory bodies of the other Member States through which the international train path concerned runs and, where appropriate, the European Commission, and request all necessary information from them before taking its decision.
- (b) The regulatory body shall, if consulted by a regulatory body in another Member State pursuant to the corresponding requirements to subparagraph (a) under their national law, provide all information that it itself has the right to request under these Regulations.
 - (c) Information received by the regulatory body under subparagraph (a) may only be used for the purpose of handling the complaint or investigation referred to in that subparagraph.
 - (d) 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.

Appeals

30. (1) An applicant who believes it has been unfairly treated, discriminated against or is in any other way aggrieved by a decision of the EFB, the infrastructure manager or, where appropriate, the railway undertaking or the operator of a service facility, concerning—

- (a) the allocation of infrastructure capacity,
- (b) the charging of infrastructure charges,
- (c) the network statement in its provisional and final versions,
- (d) the criteria set out in the network statement,
- (e) the allocation process and its result,
- (f) the charging scheme,
- (g) the level or structure of infrastructure charges which it is, or may be, required to pay,
- (h) arrangements for access under Regulations 12 and 14, or
- (i) access to and charging for services in accordance with Regulation 14,

may, within the period specified in paragraph (2), appeal against that decision to the regulatory body.

(2) An appeal under paragraph (1) shall be made by delivering a written notice of appeal to the regulatory body not later than 21 days after the date that the applicant is notified of the decision being appealed.

(3) On receipt of a notice of an appeal under paragraph (2) the regulatory body shall inform the EFB, the infrastructure manager, the railway undertaking or the operator of a service facility, as applicable, of the receipt of the appeal.

(4) (a) The regulatory body has power to request relevant information from the EFB, the infrastructure manager, the railway undertaking, the operator of a service facility and any third party involved within the State or in any other Member State concerned.

(b) Information requested by the regulatory body under subparagraph (a) shall be supplied within a reasonable period set by the regulatory body that shall not exceed 1 month, unless, in exceptional circumstances, the regulatory body agrees to, and authorises, a time-limited extension, which shall not exceed 2 additional weeks.

(5) After considering an appeal the regulatory body may—

(a) confirm the decision of the EFB, the infrastructure manager, the railway undertaking or the operator of a service facility, as applicable, or

- (b) substitute its decision for that of the EFB, the infrastructure manager, the railway undertaking or the operator of a service facility, as applicable, and that decision shall take effect as if made by the EFB, the infrastructure manager, the railway undertaking or the operator of a service facility, as applicable.
- (6) The regulatory body upon hearing an appeal under paragraph (1) shall—
- (a) make a decision under paragraph (5) within 2 months after the submission of all information relevant to the appeal, and
 - (b) by written notice, inform the appellant and the EFB, the infrastructure manager, the railway undertaking or the operator of a service facility, as applicable of its decision including the reason or reasons for the decision.
- (7) A decision of the regulatory body under paragraph (6) shall be binding on all parties covered by that decision.
- (8) The regulatory body shall publish its decisions.
- (9) If the appellant referred to in paragraph (1) is dissatisfied with the decision of the regulatory body, that party may appeal to the High Court within 21 days of the date of the decision of the regulatory body.
- (10) On hearing an appeal under paragraph (9) the High Court may either confirm or vary the decision of the regulatory body or uphold the complaint.
- (11) On receipt of a notice of appeal by the EFB under paragraph (1) against a decision on the charging of infrastructure charges, the requirement to pay the charges shall be suspended pending the final determination of the appeal.

Complaints

31. (1) Any railway undertaking or interested party may lodge a complaint with the regulatory body, if that railway undertaking, or interested party believes that it has been treated unjustly, or treated in a non-equitable or discriminatory manner with regard to access or any other matters relevant to these Regulations, including the following:

- (a) the network statement in its provisional and final versions;
- (b) the criteria set out in the network statement;
- (c) the allocation process and its result;
- (d) the charging scheme;
- (e) the level or structure of infrastructure charges which it is, or may be, required to pay;
- (f) arrangements for access under Regulations 12 and 14;

- (g) access to and charging for services in accordance with Regulation 14.
- (2) The regulatory body shall consider any complaints received under paragraph (1).
- (3) (a) On receipt of a complaint under paragraph (1) the regulatory body shall inform all relevant parties of the receipt of a complaint and shall, within 1 month from receipt of a complaint, request relevant information and initiate consultations with all relevant parties.
- (b) Information requested by the regulatory body under subparagraph (a) shall be supplied within a reasonable period set by the regulatory body that shall not exceed 1 month, unless, in exceptional circumstances, the regulatory body agrees to, and authorises, a time-limited extension, which shall not exceed 2 additional weeks.
- (4) After considering a complaint the regulatory body shall decide on the complaint, take action to remedy the situation and, in accordance with paragraph (5) inform the relevant parties of its reasoned decision.
- (5) The regulatory body shall, within a pre-determined reasonable time, and, in any case, within 6 weeks from receipt of all information relevant to the complaint, by written notice, inform the complainant and the other relevant parties of its decision including the reason or reasons for the decision.
- (6) A decision of the regulatory body under paragraph (4) shall be binding on all parties covered by that decision.
- (7) The regulatory body, may, with or without a complaint being made under paragraph (1), decide on appropriate measures to correct undesirable developments in the rail services markets.
- (8) If the party that lodged a complaint referred to in paragraph (1) is dissatisfied with the decision of the regulatory body, that party may appeal to the High Court within 21 days of the date of the decision of the regulatory body.
- (9) On hearing an appeal under paragraph (8) the High Court may either confirm or vary the decision of the regulatory body or uphold the complaint.

Compliance notice given by regulatory body, right of appeal and court compliance order

32. (1) The regulatory body, either on its own initiative where it is of the opinion the EFB, the infrastructure manager or an operator of service facilities is contravening or has contravened or is failing to comply or has failed to comply with any of the provisions of these Regulations or following a complaint to it under Regulation 31 or an appeal under Regulation 30, may give a compliance notice to the EFB, the infrastructure manager or an operator of service facilities requiring the provider to take such measures as are specified in the compliance notice, within such period as may be specified, for the purposes of complying with the compliance notice.

(2) Where the regulatory body proposes to give a compliance notice under paragraph (1), it shall first notify the EFB, infrastructure manager or operator of service facilities concerned in writing of its intention to give a compliance notice under this Regulation and the EFB, infrastructure manager or operator of service facilities in question may, within 21 days, make representations to the regulatory body, who shall consider them.

(3) Where the regulatory body decides, having considered any representations made to it under paragraph (2), to give a compliance notice, the EFB, infrastructure manager or operator of service facilities which is aggrieved by such compliance notice may, within the period of 14 days beginning on the day on which the notice is given to it, appeal to the High Court against the notice and in determining the appeal the judge may—

- (a) if he or she is satisfied that in the circumstances of the case it is reasonable to do so, confirm the notice with or without modification, or
- (b) cancel the notice.

(4) The EFB, infrastructure manager or an operator of service facilities who appeals against a compliance notice shall at the same time notify the regulatory body of the appeal and the grounds for appeal and the regulatory body shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(5) Where an appeal against a compliance notice is taken, the notice shall take effect on the day next following the day on which the notice is confirmed on appeal or the appeal is withdrawn or on the day specified in the notice as that one which it is to come into effect, whichever is the later.

(6) Where no appeal is taken against a compliance notice, the notice shall take effect on the expiration of the period during which such an appeal may be taken or on the day specified in the notice as that on which it is to come into effect, whichever is the later.

(7) The regulatory body may withdraw a compliance notice given under paragraph (1) at any time before a date specified therein or it may extend and further extend such date at any time when an appeal against the notice is not pending.

(8) Where the EFB, the infrastructure manager or an operator of service facilities, to whom a compliance notice has been given under paragraph (1) fails to comply with the notice within the specified period, the regulatory body may make an application to the High Court for an order to comply with the notice. The Court may make such order as it sees fit.

Determination of principal purpose of proposed international passenger rail service

33. (1) With regard to an application under Regulation 12, in order to enable the assessment of the principal purpose of the proposed international service to carry passengers between stations located in different Member States, and the potential impact on existing public service contracts, the EFB shall ensure that the competent authority, the regulatory body, the infrastructure manager, the

award body for the public service contract and any railway undertaking performing the public service contract on the route of this proposed international passenger service is informed concerning the application.

(2) The regulatory body shall determine whether the principal purpose of a service for which access has been requested under Regulation 12(1) is to carry passengers between stations located in different Member States, following a request from the competent authority, the award body for the public service contracts, the infrastructure manager, or the railway undertaking performing the public service contract.

(3) The regulatory body may determine that the EFB limits the right of access defined in Regulation 12(1) on proposed services between a place of departure and a destination which are covered by one or more public service contracts.

(4) A limitation to the right of access under paragraph (3) may not have the effect of restricting the right to pick up passengers at any station located on the route of an international service and to set them down at another, including stations located in the same Member State, except where the exercise of this right would compromise the economic equilibrium of a public service contract.

(5) A determination made under paragraph (2) or (3) by the regulatory body shall be based on an objective economic analysis and pre-determined criteria.

(6) The competent authority, the award body for the public service contract and the railway undertakings providing the public services shall provide the regulatory body with the information reasonably required under paragraph (2) or (3) in order for the regulatory body to reach a decision.

(7) The regulatory body shall consider the information provided under paragraph (6), consulting all the relevant parties as appropriate, and shall inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within 2 months of receipt of all relevant information. The regulatory body shall give the grounds for its decision and specify the time period within which, and the conditions under which, a request for a reconsideration of the decision can be made.

(8) A request for a reconsideration of the decision made under paragraph (7) may be made by the competent authority, the award body for the public service contracts, the EFB, the infrastructure manager concerned, the railway undertaking performing the public service contract or the railway undertaking seeking access.

Part 4

LICENSING OF RAILWAY UNDERTAKINGS

Application (Part 4)

34. (1) This Part applies to the issue, renewal, amendment, revocation or suspension of licences to railway undertakings established, or to be established, in the State, the main business of which is, or will be, the provision of services for

the transport of goods or passengers or both by rail, with a requirement that the undertaking must ensure traction and including undertakings which provide traction only.

(2) In this Part, “licence” means, except in Regulation 50, an authorisation which—

- (a) is issued by the licensing authority under Regulation 38 to a railway undertaking, and
- (b) subject to any limitations as to the specific services that may be provided, recognises the undertaking's capacity as a railway undertaking,

but which shall not, in itself, entitle the railway undertaking access to railway infrastructure.

(3) Upon review of a licence under this Part, the licensing authority may renew, suspend, revoke or amend such licence.

Designation and functions of Railway Safety Commission as licensing authority

35. (1) The Railway Safety Commission is designated as the licensing authority for the purposes of these Regulations and the Directive and is responsible for issuing licences and for carrying out the obligations imposed by these Regulations and the Directive.

(2) The licensing authority may—

- (a) limit the services that may be provided under a licence,
- (b) incorporate in a licence conditions requiring the licensee to submit to a review of its licence at least every 5 years during the currency of the licence, and
- (c) incorporate in a licence specific conditions governing the suspension or revocation of the licence.

(3) The licensing authority shall not provide rail transport services itself and shall be independent of firms or entities that do so.

Prohibition on providing rail transport services without licence

36. A railway undertaking that operates or manages a rail transport service on a railway infrastructure without a licence for the time being in force in relation to the provision of that service commits an offence and is liable—

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €300,000.

Application for licence

37. (1) Any railway undertaking established in the State may apply for a licence.

- (2) Each railway undertaking shall comply with the licensing requirements of these Regulations.
- (3) The licensing authority shall not issue a licence or extend the validity of a licence unless the railway undertaking complies with the licensing requirements of these Regulations.
- (4) Each railway undertaking applying for a licence shall demonstrate to the licensing authority before the start of its activities that it will at any time be able to meet the requirements relating to good repute, financial fitness, professional competence and cover for its civil liability and, for those purposes, shall provide all relevant information to the licensing authority.
- (5) An application for a licence shall be in such form as the licensing authority may from time to time direct and be accompanied by the following:
- (a) appropriate written proof that the railway undertaking is established in the State;
 - (b) an affidavit for the purposes of good repute in accordance with Regulation 39;
 - (c) the particulars listed in Schedule 8 and such other information concerning the financial fitness of the railway undertaking as the licensing authority may reasonably request for the performance of its functions under these Regulations to verify the financial fitness of the undertaking;
 - (d) appropriate written proof that the railway undertaking meets the requirements relating to professional competence;
 - (e) appropriate written proof that the railway undertaking maintains adequate insurance cover or has made arrangements having equivalent effect for cover of its liabilities in the event of accidents, in particular in respect of passengers, luggage, freight, mail and third parties;
 - (f) appropriate written proof that the railway undertaking intending to operate international goods services complies with the customs and tax regulations of any Member State in which it proposes to operate services;
 - (g) the application fee required under Regulation 46(1)(c).
- (6) The licensing authority may—
- (a) seek further particulars of any matter that appears to it to be relevant to its consideration of an application, and
 - (b) require those particulars to be given by means of an affidavit or statutory declaration or in such other manner as it may direct.

(7) The licensing authority may make any enquiries that it sees fit in order to verify the following:

- (a) any information contained in an application for a licence or in an accompanying affidavit, statutory declaration or particulars given in another manner that was directed by it;
- (b) any particulars given to it under paragraph (5).

(8) The requirements relating to financial fitness shall be met when a railway undertaking applying for a licence can demonstrate that it will be able to meet its actual and potential obligations, established under realistic assumptions, for a period of 12 months.

- (9) (a) The licensing authority shall verify financial fitness especially by means of a railway undertaking's annual accounts or, in the case of undertakings applying for a licence which are unable to present annual accounts, a balance sheet. Each undertaking applying for a licence shall provide at least the information listed in Schedule 7.
- (b) The licensing authority shall not consider a railway undertaking applying for a licence to be financially fit if considerable or recurrent arrears of taxes or social security are owed as a result of that undertaking's activity.

(10) The requirements relating to professional competence shall be met when a railway undertaking applying for a licence can demonstrate that it has or will have a management organisation which possesses the knowledge or experience necessary to exercise safe and reliable operational control and supervision of the type of operations specified in the licence.

(11) A railway undertaking shall be adequately insured to cover for civil liability or have adequate guarantees under market conditions for cover of its liabilities in the event of accidents, in particular in respect of passengers, luggage, freight, mail and third parties.

(12) A person who for the purpose of obtaining a licence or satisfying any requirements specified in this Part, makes a declaration or statement or provides any information which is false or which, to his or her knowledge, is misleading in a material respect, commits an offence and is liable—

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €200,000.

Issue of licences

38. (1) The licensing authority shall, after considering an application made under Regulation 37, issue a licence to the railway undertaking if it is satisfied that the undertaking will be able, at all times during the currency of the licence, to meet—

- (a) in accordance with Regulation 39, the requirement of good repute, and
 - (b) in accordance with Regulation 37, the requirements relating to financial fitness, professional competence and cover for civil liability.
- (2) A licence issued under paragraph (1) shall be in such form as the licensing authority may from time to time direct.
- (3) The licensing authority's decision in respect of an application for the issue of a licence shall be made as soon as possible and, in any event, not later than 3 months from the date of receipt, by the licensing authority, of all relevant information from the railway undertaking. In particular, the relevant information shall include the information relating to financial fitness referred to in Schedule 8. The railway undertaking shall be notified in writing of the licensing authority's decision and the grounds for that decision as soon as possible.
- (4) Specific conditions governing the suspension or revocation of a licence may be incorporated in the licence itself.
- (5) A licence shall be valid as long as the railway undertaking complies with the licensing requirements of these Regulations.
- (6) The licensing authority shall immediately inform the European Railway Agency of the fact of the issue of a licence.
- (7) A licence issued by the licensing authority in another Member State is valid in the State.

Good repute

39. (1) For the purposes of this Part and the requirements for good repute, the railway undertaking shall furnish the licensing authority with a declaration, sworn by an officer of the railway undertaking, confirming that—
- (a) neither the railway undertaking nor any person in charge of its management has been convicted of a criminal offence including offences of a commercial nature or offences applicable to transport under the laws of the State or under the laws of a foreign state, for which the penalty upon conviction was at least one, or both, of the following punishments, or their equivalent under the law of a foreign state—
 - (i) a sentence of imprisonment exceeding 3 years, or
 - (ii) a fine exceeding €10,000,
 - (b) neither the railway undertaking nor any person in charge of its management—
 - (i) has been declared bankrupt,

- (ii) has made (whether as an individual or otherwise and whether under the control of a court or otherwise) a composition or arrangement with creditors,
 - (iii) has been in charge of the management of a company or cooperative which has been wound up by a court or which has committed any act of insolvency, or
 - (iv) in the case of an undertaking that is an individual or a partnership, the individual or any partner in the partnership has not been declared bankrupt or has not made (whether as an individual or as a partner in a partnership and whether under the control of a court or otherwise) a composition or arrangement with creditors, and
- (c) neither the railway undertaking nor any person in charge of its management has been convicted of serious or repeated failure, under the laws of the State or under the laws of a foreign state, to fulfil social or labour law obligations, including obligations under occupational health and safety legislation, and customs law obligations in the case of a company seeking to operate cross-border freight transport subject to customs procedures.

(2) In determining whether a railway undertaking is of good repute the licensing authority shall also have regard to all relevant evidence, including any information in its possession as to the previous conduct of any officer of the undertaking if that conduct appears to it to relate to the railway undertaking's fitness to hold a licence.

(3) For the purposes of this Regulation, a person shall be considered—

- (a) to be in charge of the management of a railway undertaking if that person is a director, manager, secretary or other officer of the undertaking or purports to act in such capacity, and
- (b) to have been in charge of the management of a company or cooperative if that person was a director, manager, secretary or other officer of the company or cooperative or purported to act in such capacity.

Duty of licensee to comply

40. A licensee shall comply with the requirements of a licensee under this Part.

Review of licence

41. (1) Where a licence is submitted for review in accordance with a condition of the licence the licensing authority—

- (a) shall determine whether or not the licensee continues to comply with the requirements imposed by or under these Regulations and the conditions of the licence, and

- (b) may require the licensee to provide the licensing authority with any information it considers necessary for the purposes of making that determination.
- (2) On submitting to a review of a licence, the licensee shall—
 - (a) provide any information required under paragraph (1)(b), and
 - (b) pay the fee specified under Regulation 46(1)(c).
- (3)
 - (a) In the event of a change to a licensee's legal situation, in particular following a change in the control or ownership of the licensee as a result of a merger with, or take-over by another railway undertaking, the licensing authority may require the licensee to submit its licence for review.
 - (b) The licensee may continue operations while its licence is under review unless the licensing authority is satisfied that safety is jeopardised by the change.
 - (c) The licensee shall discontinue operations immediately upon being notified by the licensing authority of its decision that safety has been, or will be, jeopardised. Such notification shall be in writing and shall include the grounds for the decision of the licensing authority.
- (4) When a licensee intends to significantly change or extend its activities from those in respect of which a licence was issued to it, the licensee shall submit its licence to the licensing authority for review.
- (5) Upon review of a licence under this Regulation, the licensing authority may renew, suspend, revoke or amend such licence. The licensee shall be notified in writing of the licensing authority's decision and the grounds for its decision.
- (6) If the licensing authority has serious doubt that a licensee continues to comply with the requirements of these Regulations, the licensing authority may, at any time, require the licensee to submit its licence for review under this Regulation for the purposes of determining whether the licensee continues to comply with the requirements of these Regulations.
- (7) When a licensee has ceased operations for, or has not commenced operations, 6 months after the issuing of a licence, the licensing authority may require the licensee to submit the licence for review. In respect of the commencement of operations, the licensee may request a longer time period on the basis of the specific nature of the services to be provided by the licensee.

Suspension and revocation of licence

42. (1) The licensing authority shall suspend or revoke a licence if the licensee fails to provide any information required by the licensing authority on review of that licence.

- (2) The licensing authority may suspend a licence if the licensee—
- (a) has ceased operations for 6 months, or
 - (b) has not started operations within 6 months after the issue of the licence or within a longer period agreed to by the licensing authority.
- (3) Subject to paragraph (4), the licensing authority shall suspend or revoke a licence where the licensing authority is satisfied that the licensee can no longer satisfy the requirements specified in these Regulations.
- (4) The licensing authority shall revoke a licence of a railway undertaking if bankruptcy or similar proceedings have been commenced for the winding up of the licensee on the grounds that the licensee is unable to pay its debts and the licensing authority is satisfied that there is no reasonable prospect of satisfactory financial restructuring of the licensee within a reasonable period of time.
- (5) When the licensing authority suspends, revokes, or amends a licence, it shall immediately inform the European Railway Agency of the fact of the suspension, revocation, or amendment of that licence.
- (6) Where the licensing authority has suspended or revoked a licence solely on the grounds of non-compliance with the requirements of financial fitness, but considers that there is a realistic prospect of a satisfactory re-organisation of the licensee taking place within a reasonable period of time, the licensing authority may, provided the licensing authority is satisfied that safety is not jeopardised, issue a temporary licence to the licensee, valid for a period of time not exceeding 6 months, pending such re-organisation.
- (7) The licensee shall be notified in writing of the licensing authority's proposal or decision to suspend or revoke a licence and the grounds for that proposal or decision.

Representations and appeals

43. (1) Where the licensing authority proposes to refuse an application for, suspend, or revoke a licence the railway undertaking or the licensee, as the case may be, may, not later than 21 days after notification of the proposal was issued to the railway undertaking or licensee, make written representations to the licensing authority to review the proposal. The licensing authority shall consider any such representations so made.

(2) Where the licensing authority decides to refuse an application for, suspend, or revoke a licence the railway undertaking or the licensee, as the case may be, may, not later than 21 days after notification of the decision was issued to the railway undertaking or licensee, appeal against that decision to the High Court.

(3) A decision of the licensing authority to refuse an application for, suspend, or revoke, a licence shall take effect on the expiry of the period of 21 days after notification of the decision was issued to the railway undertaking or licensee.

(4) On hearing an appeal under paragraph (2), the High Court may either confirm the licensing authority's decision or allow the appeal.

(5) If an appeal is allowed, the licensing authority shall—

(a) issue the licence, if the appeal is from a decision to refuse an application for a licence, or

(b) cancel the suspension or revocation, if the appeal is from a decision to suspend or revoke the licence.

(6) Notwithstanding paragraph (3), in the case of an appeal from a decision of the licensing authority to suspend or revoke a licence, the licensee may apply to the High Court for an order suspending the decision of the licensing authority until such time as the appeal is determined by the High Court or otherwise disposed of by the parties.

(7) If the High Court grants an order pursuant to an application under paragraph (6), it may do so subject to such terms and conditions deemed appropriate by the High Court.

(8) Any decision or proposal of the licensing authority may be appealed to the High Court not later than 21 days of the date of the issue of notification of the decision or proposal to the applicant or licensee.

Publication of notice of issue, suspension or revocation of licence

44. The licensing authority shall cause a notice to be published in *Iris Oifigiúil* of every licence issued, amended, suspended or revoked under these Regulations.

Railway licences register

45. (1) The licensing authority shall establish and maintain a register of licences issued, amended, suspended or revoked (“railway licences register”). The railway licences register shall be in such form and contain such particulars as the licensing authority may specify from time to time.

(2) The railway licences register shall be open to inspection by any person during normal office hours subject to written application and payment of the fee specified in Regulation 46(1)(a).

(3) Any person shall be entitled to obtain from the licensing authority a copy of any entry in the railway licences register on written application and payment of the fee specified in Regulation 46(1)(b).

(4) Every document purporting to be a copy of an entry in the railway licences register and purporting to be certified by an officer of the licensing authority as a true copy of the entry shall without proof of the signature of the person purporting to so certify or proof that he or she was an officer of the licensing authority, be received in evidence in any legal proceedings and shall, until the contrary is proved, be deemed to be a true copy of the entry and be evidence of the terms of the entry.

(5) The licensee shall within 21 days after any change in a licensee's name or address, notify the licensing authority of the change.

Fees

46. (1) The following fees shall be paid to the licensing authority in such manner as it may direct:

- (a) for inspection of the railway licences registry, a fee of €6.35 per hour or part thereof;
- (b) for the provision of a certified copy of any entry in the railway licences registry, a fee of €12.70 per copy;
- (c) for an application for, or upon review of, a licence, a fee in an amount as may be specified by the licensing authority from time to time in consultation with the Minister.

(2) The fees paid to the licensing authority under this Regulation shall accrue to the authority and shall be applied for the purpose of meeting expenses properly incurred by the authority in the discharge of its functions.

Service of notices

47. (1) Where a notice is required to be given to a person under these Regulations, the notice shall be in writing and shall be addressed to that person and shall be given to the person in one of the following ways:

- (a) by delivering it in person;
- (b) by leaving it at the address at which the person ordinarily resides or carries on business;
- (c) by sending it by post in a pre-paid registered letter or by any other form of recorded delivery service, addressed to the person at the address at which the person ordinarily resides or carries on business;
- (d) if an address for the service of notices has been furnished by the person, by leaving it at, or sending it by pre-paid registered post or by any other form of recorded delivery service addressed to the person to, that address;
- (e) in any case where the regulatory body considers that the immediate giving of the notice is required, by sending it, by means of a facsimile machine or electronic mail, to a device or facility for the reception of facsimiles or electronic mail located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the sender's—
 - (i) facsimile machine generates a message confirming successful transmission of the total number of pages of the notice, or

- (ii) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail.

(2) For the purposes of this Regulation, a company registered under the Companies Act 2014, shall be deemed to be ordinarily resident at its registered office and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

Offence by railway undertaking management

48. (1) Where an offence under Regulation 36 or 37(12) is committed by a railway undertaking and is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person, being a director, manager, secretary or other officer of the railway undertaking, or a person who was purporting to act in any such capacity, that person, as well as the railway undertaking, commits an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

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

Prosecutions by licensing authority

49. Proceedings for an offence under Regulation 36 or 37 may be brought and prosecuted summarily by the licensing authority.

Recognition of validity of licences issued by other Member States

50. (1) A licence issued to a railway undertaking by a licensing authority of another Member State, shall, during the currency of the licence, be valid in the State.

(2) If the licensing authority is satisfied that there is serious doubt regarding compliance with the requirements of the Directive on the part of a railway undertaking to which a licence has been issued by the licensing authority of another Member State, the licensing authority shall inform the licensing authority in that other Member State in question, immediately.

Saver, continuity and completion of matters, etc

51. (1) In respect of a licence to which these Regulations apply—

- (a) any licence that was issued to a railway undertaking by the Minister under the Regulations of 2003 shall continue in force and may be reviewed, renewed, amended, suspended, or revoked by the licensing authority as if it had been issued under these Regulations,
- (b) any reference to a licence that was issued by the Minister under the Regulations of 2003 and any reference in any enactment or elsewhere to such a licence is deemed to be a reference to a licence issued by the licensing authority under these Regulations, and

(c) anything commenced but not completed by an applicant, a licensee or the licensing authority under the Regulations of 2003 before the enactment of these Regulations may, in so far as it relates to Part 4 of these Regulations, be carried on and completed by an applicant, a licensee or the licensing authority under these Regulations.

(2) Any matter that was done by the infrastructure manager or a railway undertaking under the European Communities (Railway Infrastructure) Regulations 2010 (S.I. No. 55 of 2010), in so far as it relates to a matter in these Regulations, is deemed to have been done under these Regulations.

SCHEDULE 1

Regulation 2

LIST OF RAILWAY INFRASTRUCTURE ITEMS

Railway infrastructure consists of the following items, provided they form part of the permanent way, including sidings, but excluding lines situated within railway repair workshops, depots or locomotive sheds, and private branch lines or sidings:

- Ground area,
- Track and track bed, in particular embankments, cuttings, drainage channels and trenches, masonry trenches, culverts, lining walls, planting for protecting side slopes, etc.; passenger and goods platforms, including in passenger stations and freight terminals; four-foot way and walkways; enclosure walls, hedges, fencing; fire protection strips; apparatus for heating points; crossings etc.; snow protection screens,
- Engineering structures: bridges, culverts and other overpasses, tunnels, covered cuttings and other underpasses; retaining walls, structures for protection against avalanches, falling stones, etc.,
- Level crossings, including appliances to ensure the safety of road traffic,
- Superstructure, in particular: rails, grooved rails and check rails; sleepers and longitudinal ties, small fittings for the permanent way, ballast including stone chippings and sand; points, crossings, etc.; turntables and traverses (except those reserved exclusively for locomotives),
- Access way for passengers and goods, including access by road and access for passengers arriving or departing on foot,
- Safety, signalling and telecommunications installations on the open track, in stations and in marshalling yards, including plant for generating, transforming and distributing electric current for signalling and telecommunications; buildings for such installations or plant; track brakes,
- Lighting installations for traffic and safety purposes,
- Plant for transforming and carrying electric power for train haulage: substations, supply cables between substations and contact wires, catenaries and supports; third rail with supports,
- Buildings used by the infrastructure department, including a proportion of installations for the collection of transport charges.

SCHEDULE 2

Regulations 2, 12, 14 and 25

SERVICES TO BE SUPPLIED TO THE RAILWAY UNDERTAKINGS

1. The minimum access package shall comprise:
 - (a) handling of requests for railway infrastructure capacity;
 - (b) the right to utilise capacity which is granted;
 - (c) use of the railway infrastructure, including track points and junctions;
 - (d) train control including signalling, regulation, dispatching and the communication and provision of information on train movement;
 - (e) use of electrical supply equipment for traction current, where available;
 - (f) all other information required to implement or operate the service for which capacity has been granted.

2. Access, including track access, shall be given to the following services facilities, when they exist, and to the services supplied in these facilities:
 - (a) passenger stations, their buildings and other facilities, including travel information display and suitable location for ticketing services;
 - (b) freight terminals;
 - (c) marshalling yards and train formation facilities, including shunting facilities;
 - (d) storage sidings;
 - (e) maintenance facilities, with the exception of heavy maintenance facilities dedicated to high-speed trains or to other types of rolling stock requiring specific facilities;
 - (f) other technical facilities, including cleaning and washing facilities;
 - (g) maritime and inland port facilities which are linked to rail activities;
 - (h) relief facilities;
 - (i) refuelling facilities and supply of fuel in these facilities, charges for which shall be shown on the invoices separately.

3. Additional services may comprise:
 - (a) traction current, charges for which shall be shown on the invoices separately from charges for using the electrical supply equipment.

- (b) pre-heating of passenger trains;
 - (c) tailor-made contracts for—
 - (i) control of transport of dangerous goods, or
 - (ii) assistance in running abnormal trains.
4. Ancillary services may comprise:
- (a) access to telecommunication networks;
 - (b) provision of supplementary information;
 - (c) technical inspection of rolling stock;
 - (d) ticketing services in passenger stations;
 - (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

*Regulation 8***BASIC PRINCIPLES AND PARAMETERS OF CONTRACTUAL AGREEMENTS BETWEEN COMPETENT AUTHORITY AND INFRASTRUCTURE MANAGERS**

The contractual agreement shall specify the provisions of Regulation 8 and include at least the following elements:

(1) the scope of the agreement as regards infrastructure and service facilities, structured in accordance with Schedule 2. It shall cover all aspects of infrastructure management, including maintenance and renewal of the infrastructure already in operation. Where appropriate, construction of new infrastructure may also be covered;

(2) the structure of payments or funds allocated to the infrastructure services listed in Schedule 2, to maintenance and renewal and to dealing with existing maintenance and renewal backlogs. Where appropriate, the structure of payments or funds allocated to new infrastructure may be covered;

(3) user-oriented performance targets, in the form of indicators and quality criteria covering elements such as:

- (a) train performance, such as in terms of line speed and reliability, and customer satisfaction,
- (b) network capacity,
- (c) asset management,
- (d) activity volumes,
- (e) safety levels, and
- (f) environmental protection;

(4) the amount of possible maintenance backlog and the assets which will be phased out of use and therefore trigger different financial flows;

(5) any incentives as referred to in Article 30(1) of the Directive, relating to the agreement under Regulation 8, with the exception of those incentives implemented through any regulatory measures put in place for the purposes of Article 30(3) of the Directive;

(6) minimum reporting obligations for the infrastructure manager in terms of content and frequency of reporting, including information to be published annually;

(7) the agreed duration of the agreement, which shall be synchronised and consistent with the duration of the infrastructure manager's business plan, concession or licence, where appropriate, and the charging framework and rules set by the State;

(8) rules for dealing with major disruptions of operations and emergency situations, including contingency plans and early termination of the contractual agreement, and timely information to users;

(9) remedial measures to be taken if either of the parties is in breach of its contractual obligations, or in exceptional circumstances affecting the availability of public funding; this includes conditions and procedures for renegotiation and early termination.

SCHEDULE 4

Regulations 11 and 16

CONTENTS OF THE NETWORK STATEMENT

The network statement referred to in Regulation 11 shall contain the following information:

1. A section setting out the nature of the infrastructure which is available to railway undertakings and the conditions of access to it. The information in this section shall be made consistent, on an annual basis with, or shall refer to, the rail infrastructure registers to be published in accordance with Regulation 31 of the European Communities (Interoperability of the Rail System) Regulations 2011(S.I. No. 419 of 2011).

2. A section on charging principles and tariffs. This shall contain appropriate details of the charging scheme as well as sufficient information on charges as well as other relevant information on access applying to the services listed in Schedule 2 which are provided by only one supplier. It shall detail the methodology, rules and, where applicable, scales used for the application of Regulation 25, as regards both costs and charges. It shall contain information on changes in charges already decided upon or foreseen in the next 5 years, if available.

3. A section on the principles and criteria for capacity allocation. This shall set out the general capacity characteristics of the infrastructure which is available to railway undertakings and any restrictions relating to its use, including likely capacity requirements for maintenance. It shall also specify the procedures and deadlines which relate to the capacity-allocation process. It shall contain specific criteria which are employed during that process, in particular:

- (a) the procedures according to which applicants may request capacity from the infrastructure manager;
- (b) the requirements governing applicants;
- (c) the schedule for the application and allocation processes and the procedures which shall be followed to request information on the scheduling and the procedures for scheduling planned and unforeseen maintenance work;
- (d) the principles governing the coordination process and the dispute resolution system made available as part of this process;
- (e) the procedures which shall be followed and criteria used where infrastructure is congested;
- (f) details of restrictions on the use of infrastructure;
- (g) conditions by which account is taken of previous levels of utilisation of capacity in determining priorities for the allocation process.

It shall detail the measures taken to ensure adequate treatment of freight services, international services and requests subject to the ad hoc procedure. It shall contain a template form for capacity requests. The EFB shall also publish detailed information about the allocation procedures for international train paths.

4. A section on information relating to the application for a licence referred to in Part 4 and rail safety certificates issued in accordance with the Regulations of 2013 and the Railway Safety Directive or indicating a website where such information is made available free of charge in electronic format.

5. A section on 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 25(9).

6. A section on information on access to and charging for service facilities referred to in Schedule 2. Operators of service facilities which are not controlled by the infrastructure manager shall supply information on charges for gaining access to the facility and for the provision of services, and information on technical access conditions for inclusion in the network statement or shall indicate a website where such information is made available free of charge in electronic format.

7. A model agreement for the conclusion of framework agreements between an infrastructure manager and an applicant.

SCHEDULE 5

Regulation 20(1)

SCHEDULE FOR THE ALLOCATION PROCESS

1. The working timetable shall be established once per calendar year.
2. The change of working timetable shall take place at midnight on the second Saturday in December. Where a change or adjustment is carried out after the winter, in particular to take account, where appropriate, of changes in regional passenger traffic timetables, it shall take place at midnight on the second Saturday in June and at such other intervals between these dates as are required. Infrastructure managers may agree on different dates and in this case they shall inform the European Commission if international traffic may be affected.
3. 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.
4. No later than 11 months before the working timetable comes into force, the infrastructure managers shall ensure that provisional international train paths have been established in cooperation with other relevant infrastructure managers. Infrastructure managers shall ensure that as far as possible these are adhered to during the subsequent processes.
5. No later than 4 months after the deadline for submission of bids by applicants, the infrastructure manager shall prepare a draft working timetable.

SCHEDULE 6

*Regulation 25(10)*REQUIREMENTS FOR COSTS AND CHARGES RELATED TO
RAILWAY INFRASTRUCTURE

1. The pairs to be considered by infrastructure managers when they define a list of market segments with a view to introducing mark-ups in the charging system according to Regulation 25 include at least the following:

- (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.

2. The performance scheme as referred to in Regulation 25 shall be based on the following basic principles:

- (a) In order to achieve an agreed level of performance and not to endanger the economic viability of a service, the infrastructure manager shall 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;
- (b) The infrastructure manager shall communicate to the railway undertakings the working timetable, on the basis of which delays will be calculated, at least 5 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;
- (c) All delays shall be attributable to one of the following delay classes and sub-classes:
 - 1. Operation/planning management attributable to the infrastructure manager
 - 1.1. Timetable compilation
 - 1.2. Formation of train

- 1.3. Mistakes in operations procedure
- 1.4. Wrong application of priority rules
- 1.5. Staff
- 1.6. Other causes

2. Infrastructure installations attributable to the infrastructure manager
 - 2.1. Signalling installations
 - 2.2. Signalling installations at level crossings
 - 2.3. Telecommunications installations
 - 2.4. Power supply equipment
 - 2.5. Track
 - 2.6. Structures
 - 2.7. Staff
 - 2.8. Other causes

3. Civil engineering causes attributable to the infrastructure manager
 - 3.1. Planned construction
 - 3.2. Irregularities in execution of construction work
 - 3.3. Speed restriction due to defective track
 - 3.4. Other causes

4. Causes attributable to other infrastructure managers
 - 4.1. Caused by previous infrastructure manager
 - 4.2. Caused by next infrastructure manager

5. Commercial causes attributable to the railway undertaking
 - 5.1. Exceeding the stop time
 - 5.2. Request of the railway undertaking

- 5.3. Loading operations
- 5.4. Loading irregularities
- 5.5. Commercial preparation of train
- 5.6. Staff
- 5.7. Other causes

6. Rolling stock attributable to the railway undertaking
 - 6.1. Roster planning/re-rostering
 - 6.2. Formation of train by railway undertaking
 - 6.3. Problems affecting coaches (passenger transport)
 - 6.4. Problems affecting wagons (freight transport)
 - 6.5. Problems affecting cars, locomotives and rail cars
 - 6.6. Staff
 - 6.7. Other causes

7. Causes attributable to other railway undertakings
 - 7.1. Caused by next railway undertaking
 - 7.2. Caused by previous railway undertaking

8. External causes attributable to neither infrastructure manager nor railway undertaking
 - 8.1. Strike
 - 8.2. Administrative formalities
 - 8.3. Outside influence
 - 8.4. Effects of weather and natural causes
 - 8.5. Delay due to external reasons on the next network
 - 8.6. Other causes

9. Secondary causes attributable to neither infrastructure manager nor railway undertaking

- 9.1. Dangerous incidents, accidents and hazard
 - 9.2. Track occupation caused by the lateness of the same train
 - 9.3. Track occupation caused by the lateness of another train
 - 9.4. Turn-around
 - 9.5. Connection
 - 9.6. Further investigation needed;
- (d) Wherever possible, delays shall be attributed to a single organisation, considering both the responsibility for causing the disruption and the ability to re-establish normal traffic conditions;
- (e) The calculation of payments shall take into account the average delay of train services of similar punctuality requirements;
- (f) The infrastructure manager shall, as soon as possible, communicate to the railway undertakings a calculation of payments due under the performance scheme. This calculation shall encompass all delayed train runs within a period of at most 1 month;
- (g) Without prejudice to the existing appeal procedures and to the provisions of Regulations 30 and 31, in the case of disputes relating to the performance scheme, a dispute resolution system shall be made available in order to settle such matters promptly. This dispute resolution system shall be impartial towards the parties involved. If this system is applied, a decision shall be reached within a time limit of 10 working days;
- (h) Once a year, the infrastructure manager shall publish the annual average level of performance achieved by the railway undertakings on the basis of the main parameters agreed in the performance scheme.

SCHEDULE 7

*Regulations 27, 29(6) and 37(9)*ACCOUNTING INFORMATION TO BE SUPPLIED TO THE
REGULATORY BODY UPON REQUEST

1. Account separation:
 - (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 regulatory body;
 - (d) methodology used to allocate costs between different activities;
 - (e) where the regulated firm is part of a group structure, full details of inter-company payments.
2. Monitoring of track access charges:
 - (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); if required by the regulatory body, 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;
 - (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).
3. Indication of financial performance:
 - (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;
- (f) supporting notes that amplify and explain the statements, where appropriate.

SCHEDULE 8

Regulations 37 and 38

FINANCIAL FITNESS

The information to be provided by undertakings applying for a licence in accordance with Regulation 37 covers the following aspects:

- (a) available funds, including the bank balance, pledged overdraft provisions and loans;
- (b) funds and assets available as security;
- (c) working capital;
- (d) relevant costs, including purchase costs of payments to account for vehicles, land, buildings, installations and rolling stock;
- (e) charges on an undertaking's assets;
- (f) taxes and social security contributions.



GIVEN under my Official Seal,
12 June 2015.

PASCHAL DONOHOE,
Minister for Transport, Tourism and Sport.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The purpose of these Regulations is to transpose Directive 2012/34/EU (recast) establishing a single European railway area. These Regulations provide for – railway infrastructure management and access, the assignment of an essential functions body, provisions for an infrastructure management agreement and for a framework agreement between infrastructure manager and a railway undertaking, the functions of the infrastructure manager and railway undertakings and the designation of a regulatory body with monitoring, appeals, complaints and compliance functions. The Regulations also provide for the licensing of railway undertakings by a licensing authority. The previous Statutory Instruments on licensing of railway undertakings (SI No. 537 of 2003 as amended by SI No. 298 of 2010) and SI No. 55 of 2010 on railway infrastructure are revoked.

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