



STATUTORY INSTRUMENTS.

**S.I. No. 398 of 2020**



EUROPEAN UNION (REGULATION OF RAILWAYS) (AMENDMENT)  
REGULATIONS 2020

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The Minister for Transport in exercise of the powers conferred on him by section 3 of the European Communities Act 1972 (No. 27 of 1972) for the purpose of -

- (a) giving further effect to Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012<sup>1</sup> in Regulations 3(e) (in so far as it relates to insertion of definitions of regional services, train path, and urban and suburban services), 4, 5 (in so far as it relates to Regulation 4B of the European Union (Regulation of Railways) Regulations 2015 (S.I. No. 249 of 2015)), 10, 12 (in so far as it relates to Regulations 12B and 12C of the European Union (Regulation of Railways) Regulations 2015), 13(a) and (b) (in so far as it relates to Regulation 13(9) of the European Union (Regulation of Railways) Regulations 2015), 14, 16, 17, 18(a), 19, 20(b), (c) and (f), 23 and 27,
- (b) giving effect to Directive (EU) 2016/2370 of the European Parliament and of the Council of 14 December 2016<sup>2</sup>, in Regulations 3 (other than the provisions of Regulation 3(e) referred to in paragraph (a)), 5 (in so far as it relates to Regulation 4A of the European Union (Regulation of Railways) Regulations 2015), 6, 7, 8, 9, 11, 12 (in so far as it relates to Regulation 12A of the European Union (Regulation of Railways) Regulations 2015), 13(b) (in so far as it relates to Regulation 13(8) of the European Union (Regulation of Railways) Regulations 2015), 15, 18(b), 20 (a), (d), (e) and (g), 21, 22, 24 and 25, and
- (c) giving effect to Commission Delegated Decision (EU) 2017/2075 of 4 September 2017<sup>3</sup> in Regulation 26,

hereby makes the following regulations:

### Citation

1. These Regulations may be cited as the European Union (Regulation of Railways) (Amendment) Regulations 2020.

### Interpretation

2. In these Regulations “Regulations of 2015” means the European Union (Regulation of Railways) Regulations 2015 (S.I. No. 249 of 2015).

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<sup>1</sup> OJ No. L343, 14.12.2012, p.32

<sup>2</sup> OJ No. L352, 23.12.2016, p.1

<sup>3</sup> OJ No. L295, 14.11.2017, p.69

### Amendment of Regulation 2 of Regulations of 2015

3. (1) Regulation 2(1) of the Regulations of 2015 is amended:

- (a) by the substitution of the following definition for the definition of “Directive”:

“‘Directive’ means Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012<sup>1</sup> as amended by Directive (EU) 2016/2370 of the European Parliament and of the Council of 14 December 2016<sup>2</sup>;”,

- (b) by the substitution of the following definition for the definition of “essential functions”:

“‘essential functions’ of infrastructure management means decision-making concerning train path allocation, including both the definition and the assessment of availability and the allocation of individual train paths, and decision-making concerning infrastructure charging, including determination and collection of charges, in accordance with the capacity allocation framework and charging framework under Regulations 20 and 25;”,

- (c) by the substitution of the following definition for the definition of “infrastructure manager”:

“‘infrastructure manager’ means any body or firm responsible for the operation, maintenance and renewal of railway infrastructure on a network, as well as responsible for participating in its development as determined by the Minister within the framework of the general policy on development and financing of infrastructure;”,

- (d) in the definition of “Railway Safety Directive” by the substitution of “, Commission Directive 2009/149/EC of 27 November 2009<sup>4</sup> and Directive (EU) 2016/798<sup>5</sup>” for “and Commission Directive 2009/149/EC of 27 November 2009”,

and

- (e) by the insertion of the following definitions:

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<sup>1</sup> OJ No. L343, 14.12.2012, p.32

<sup>2</sup> OJ No. L352, 23.12.2016, p.1

<sup>4</sup> OJ No. L313, 28.11.2009, p.65

<sup>5</sup> OJ No. L138, 26.5.2016, p.102

“‘cross-border agreement’ means any agreement between the State and one or more than one other Member State or between the State (whether or not with another Member State) and one or more than one third country intended to facilitate the provision of cross-border rail services;

‘development of the railway infrastructure’ means network planning, financial and investment planning as well as the building and upgrading of the infrastructure;

‘high speed passenger services’ means passenger rail services operated without intermediate stops between two places separated at least by a distance of more than 200 kilometres on specially-built high-speed lines equipped for speeds generally equal or greater than 250 kilometres per hour and running on average at those speeds;

‘maintenance of the railway infrastructure’ means works intended to maintain the condition and capability of existing infrastructure;

‘management board’ means the senior body of an undertaking performing executive and administrative functions, which is responsible and accountable for day-to-day management of the undertaking;

‘operation of the railway infrastructure’ means train path allocation, traffic management and infrastructure charging;

‘regional services’ means transport services whose principal purpose is to meet the transport needs of a region, including a cross-border region;

‘renewal of the railway infrastructure’ means major substitution works on the existing infrastructure which do not change its overall performance;

‘supervisory board’ means the most senior body of an undertaking that fulfils supervisory tasks, including the exercise of control over the management board and general strategic decisions regarding the undertaking;

‘train path’ means the infrastructure capacity needed to run a train between two places over a given period;

‘upgrade of the railway infrastructure’ means major modification works to the infrastructure which improve its overall performance;

‘urban and suburban services’ means transport services whose principal purpose is to meet the transport needs of an urban centre or conurbation, including a cross-border conurbation, together with transport needs between such a centre or conurbation and surrounding areas;

‘vertically integrated undertaking’-

(a) means an undertaking -

(i) where, within the meaning of Council Regulation (EC) No 139/2004 of 20 January 2004<sup>6</sup> on the control of concentrations between undertakings -

(I) an infrastructure manager is controlled by an undertaking which at the same time controls one or several railway undertakings that operate rail services on the infrastructure manager's network,

(II) an infrastructure manager is controlled by one or several railway undertakings that operate rail services on the infrastructure manager's network, or

(III) one or several railway undertakings that operate rail services on the infrastructure manager's network are controlled by an infrastructure manager, and

(ii) it consists of distinct divisions including an infrastructure manager and one or several divisions providing transport services that do not have a distinct legal personality,

(b) does not mean an infrastructure manager and a railway undertaking, who are fully independent of each other but are both controlled directly by the State or a Member State other than the State, without an intermediary entity, and

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<sup>6</sup> OJ No. L24, 29.1.2004, p.1

- (c) in these Regulations, means the body designated to be the vertically integrated undertaking under Regulation 4A;”.

(2) Regulation 2(2) of the Regulations of 2015 is amended by the insertion of “or Commission Delegated Decision (EU 2017/2075) of 4 September 2017<sup>3</sup>” after “Directive” in both places where it occurs.

#### **Amendment of Regulation 4 of Regulations of 2015**

- 4. Regulation 4 of the Regulations of 2015 is amended -
  - (a) in paragraph (2), by the deletion of subparagraphs (a) and (c), and
  - (b) in paragraph (3), by the deletion of subparagraphs (a) and (c).

#### **Part 1A of Regulations of 2015**

5. The Regulations of 2015 are amended by the insertion of the following Part after Regulation 4:

“Part 1A

Vertically Integrated Undertaking and Commercial Principles

##### **Vertically integrated undertaking**

4A. Iarnród Éireann is designated to be the vertically integrated undertaking in the State for the purpose of these Regulations and the Directive.

##### **Management of railway undertakings according to commercial principles**

- 4B. Railway undertakings shall:
  - (a) be managed according to the principles that apply to commercial companies, irrespective of their ownership, including in relation to the management of any public service obligations imposed on them and of public service contracts that they conclude with the National Transport Authority;
  - (b) determine their business plans, including their investment and financing programmes, and such business plans shall be designed to achieve the undertakings’ financial equilibrium and other technical, commercial and financial management objectives and shall indicate the means of achieving such objectives;

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<sup>3</sup> OJ No. L295, 14.11.2017, p.69

- (c) without prejudice to Regulation (EC) No 1370/2007<sup>7</sup> amended by Regulation (EU) 2016/2338<sup>8</sup> and with reference to any general policy guidelines issued by the Minister and the Minister for Public Expenditure and Reform taking into account national plans and contracts (which may be multiannual) including investment and financing plans, be free to -
- (i) establish their internal organisation, without prejudice to the provisions of Regulations 5, 7, 20 and 25,
  - (ii) control the supply and marketing of services and fix the pricing of such services,
  - (iii) take decisions on staff, assets and own procurement,
  - (iv) expand their market share, develop new technologies and new services and adopt any innovative management techniques, and
  - (v) establish new activities in fields associated with the railway business;
- (d) without prejudice to the generality of paragraph (c) and to the powers of supervisory authorities relating to the appointment of board members, shareholders of publicly owned or controlled railway undertakings, and, where appropriate, in accordance with the Companies Act 2014 (No. 38 of 2014) as it applies to a company formed and registered under that Act or an existing company within the meaning of that Act, be able to require their own prior approval for major business management decisions in the same way as shareholders of private joint-stock companies.”.

### **Amendment of Regulation 5 of Regulations of 2015**

6. Regulation 5 of the Regulations of 2015 is amended -

(a) by the insertion of the following paragraphs after paragraph (2):

“(2A) The functions of the EFB shall be performed by Córas Iompair Éireann and shall not be outsourced to any entity, including to any entity within the vertically integrated undertaking.

(2B) The EFB shall be independent in its decision-making from any railway undertaking.

(2C) The EFB shall not allow Iarnród Éireann infrastructure manager, a railway undertaking or any other person or body to exercise a decisive influence on the

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<sup>7</sup> OJ No. L315, 3.12.2007, p.1

<sup>8</sup> OJ No. L354, 23.12.2016, p.22

decisions taken by the EFB in relation to the essential functions.

(2D) A railway undertaking or any person or body within the vertically integrated undertaking shall not have a decisive influence on the appointment or dismissal of a person in the EFB who is or is intended to be in charge of taking decisions on the essential functions.

(2E) Procedures shall be in place in the EFB to ensure that the mobility of a person into or from the EFB who is or is intended to be in charge of taking decisions on the essential functions shall not create a conflict of interest.”,

and

(b) by the substitution of the following paragraph for paragraph (4):

“(4) The EFB shall not itself provide any railway services and shall comply with -

(a) the requirements for management independence for the purposes of these Regulations, and

(b) this Regulation, paragraph (1A) of Regulation 6, paragraphs (2A) to (2D) of Regulation 7 and paragraphs (2) and (3) of Regulation 7B.”.

#### **Amendment of Regulation 6 of Regulations of 2015**

7. Regulation 6 of the Regulations of 2015 is amended by the insertion of the following paragraph after paragraph (1):

“(1A) Income received by the EFB, including from the essential functions charge, may be used by the EFB only to meet the expenses properly incurred by it in the performance of its functions under these Regulations, including the servicing of its loans.”.

#### **Amendment of Regulation 7 of Regulations of 2015**

8. Regulation 7 of the Regulations of 2015 is amended -

(a) by the substitution of the following paragraph for paragraph (2):

“(2) Iarnród Éireann infrastructure manager shall be responsible for performance of the following functions under and in accordance with these Regulations:

- (a) its own management, administration and internal control, while respecting the charging and allocation framework under these Regulations;
- (b) the operation, maintenance and renewal of the railway infrastructure on its network;
- (c) the development of the railway infrastructure of that network.”,

and

- (b) by the insertion of the following paragraphs after paragraph (2):

“(2A)The same individual shall not be concurrently appointed or employed -

- (a) as a member of the management board or head of a division of the EFB or Iarnród Éireann infrastructure manager and as member of the management board or head of a division of a railway undertaking, or
- (b) as a person in the EFB in charge of taking decisions on the essential functions and as a member of the management board of a railway undertaking.

(2B)Members of the supervisory board and of the management board of the EFB or Iarnród Éireann infrastructure manager, and the managers directly reporting to them shall act in a non-discriminatory manner and in a way such that their impartiality is not affected by any conflict of interest.

(2C)A member of the management board or a head of a division of the EFB, or, within the vertically integrated undertaking, a member of the management board or a head of a division of Iarnród Éireann infrastructure manager, in charge of taking decisions on the essential functions shall not receive any performance-based remuneration from, in the case of the EFB any, or in the case of Iarnród Éireann infrastructure manager any other, legal entity within the vertically integrated undertaking, nor shall he or she receive any bonuses principally related to the financial performance of particular railway undertakings but may be offered incentives related to the overall performance of the railway system.

(2D)Where information systems are common to different entities within the vertically integrated undertaking, access to sensitive information, relating to

essential functions shall be restricted to authorised staff of Iarnród Éireann infrastructure manager and sensitive information shall not be passed on to other entities within the vertically integrated undertaking.”.

### **Regulations 7A, 7B, 7C and 7D of Regulations of 2015**

9. The Regulations of 2015 are amended by the insertion of the following Regulations after Regulation 7:

#### **“Impartiality of the infrastructure manager in respect of traffic management and maintenance planning**

7A. (1) Iarnród Éireann infrastructure manager shall perform the functions of traffic management and maintenance planning conferred on it under these Regulations in a transparent and non-discriminatory manner and paragraph (2) shall apply to a person in charge of taking decisions in respect of those functions.

(2) A person in charge of taking decisions in respect of functions referred to in paragraph (1) shall at all times disclose to Iarnród Éireann infrastructure manager if he or she has an interest in any matter such that it would cause him or her to have a conflict of interest in the performance of his or her functions and in that case shall -

- (a) take no part in any deliberations of Iarnród Éireann infrastructure manager relating to the matter,
  - (b) neither influence nor seek to influence a decision to be made in relation to the matter,
  - (c) absent himself or herself from any meeting or part of a meeting of Iarnród Éireann infrastructure manager where the matter is to be discussed, and
  - (d) not vote on any decision in relation to the matter.
- (3)(a) As regards traffic management, Iarnród Éireann infrastructure manager shall provide railway undertakings with full and timely access to relevant information in the case of a disruption concerning them.
- (b) Iarnród Éireann infrastructure manager shall grant further access to the traffic management process referred to in subparagraph (a) to the railway undertakings concerned in a transparent and non-discriminatory manner.

(4) As regards the long-term planning of major maintenance or renewal of the railway infrastructure, Iarnród Éireann infrastructure manager shall -

- (a) consult with applicants,
- (b) to the best possible extent, take into account any concerns expressed, and

(c) inform the EFB of the proposed maintenance or renewal works.

(5) The scheduling of maintenance works referred to in paragraph (4) shall be carried out by Iarnród Éireann infrastructure manager in a non-discriminatory manner.

### **Financial transparency**

7B. (1) Income from infrastructure network management activities, including public funding, may be used by Iarnród Éireann infrastructure manager only -

(a) to finance its own business, including the servicing of its loans, and

(b) in accordance with the requirements of these Regulations or any other enactment or rule of law, to pay any dividends to be paid into, or disposed for the benefit of the Exchequer in such manner as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine.

(2) Neither Iarnród Éireann infrastructure manager nor the EFB shall grant loans to railway undertakings, either directly or indirectly.

(3) Railway undertakings shall not grant loans to Iarnród Éireann infrastructure manager or the EFB, either directly or indirectly.

(4) Loans between legal entities of the vertically integrated undertaking shall only be granted, disbursed and serviced at market rates and conditions which reflect the individual risk profile of the entity concerned.

(5) Any loans between legal entities of the vertically integrated undertaking granted before 24 December 2016 shall continue until their maturity, provided that they were contracted at market rates and that they are actually disbursed and serviced.

(6) Any services offered by other legal entities of the vertically integrated undertaking to Iarnród Éireann infrastructure manager shall be provided on the basis of contracts and be paid either at market prices or at prices which reflect the cost of production, plus a reasonable margin of profit.

(7) Any debts attributed to Iarnród Éireann infrastructure manager shall be clearly separated from debts attributed to other legal entities within the vertically integrated undertaking.

(8) Debts referred to in paragraph (7) shall be serviced separately.

(9) The requirement referred to in paragraph (8) shall not prevent the final payment of debts being made -

(a) through an undertaking which is part of the vertically integrated undertaking and which exercises control over both a railway undertaking and Iarnród Éireann infrastructure manager, or

(b) through another entity within the undertaking.

(10) The accounts of Iarnród Éireann infrastructure manager and of any other legal entities within the vertically integrated undertaking shall be kept in a way that ensures compliance with this Regulation and allows for separate accounting and transparent financial circuits within the undertaking.

(11) Within the vertically integrated undertaking, Iarnród Éireann infrastructure manager shall keep detailed records of any commercial and financial relations with the other legal entities within the undertaking.

(12) Compliance with the requirements set out in this Regulation shall be demonstrated in the separate accounts of the respective divisions of the vertically integrated undertaking.

(13) A reference in this Regulation -

- (a) to a railway undertaking is to a railway undertaking that is a division of the vertically integrated undertaking, and
- (b) to Iarnród Éireann infrastructure manager, a railway undertaking or any other legal entity of the vertically integrated undertaking is a reference to a division that is organised as a separate and distinct division of the vertically integrated undertaking and does not have a distinct legal personality.

### **Outsourcing and sharing the infrastructure manager's functions**

7C. (1) Provided that no conflicts of interest arise, that the confidentiality of commercially sensitive information is guaranteed and that it retains supervisory power over, and bears ultimate responsibility for, the exercise of the functions as provided in the definition of 'infrastructure manager' in Regulation 2(1), Iarnród Éireann infrastructure manager may-

- (a) outsource functions, other than essential functions referred to in Regulation 5, to a different entity, provided that entity is not a railway undertaking, does not control a railway undertaking, or is not controlled by a railway undertaking, and
- (b) outsource the execution of works and related tasks on development, maintenance and renewal of the railway infrastructure to railway undertakings or companies which control a railway undertaking, or are controlled by a railway undertaking.

(2) Where the holder of a licence granted in accordance with subparagraph (b) or (h) of section 14(1) of the Electricity Regulation Act 1999 (No. 23 of 1999) undertakes infrastructure management functions, other than essential functions referred to in Regulation 5, such a holder of a licence shall comply with the provisions of Regulations 7A, 10, 18(4), 27, 28, 28A and 29(6) to the extent relevant.

(3) Subject to supervision by the regulatory body, Iarnród Éireann infrastructure manager may conclude cooperation agreements with one or more than one railway undertaking in a non-discriminatory way and with a view to delivering benefits to customers such as reduced costs or improved performance on the part of the network covered by the agreement and the regulatory body shall assess such agreements to ensure compliance with this Regulation and monitor the execution of such agreements and may, where justified, advise that they should be terminated.

### **Coordination mechanisms**

7D. (1) Iarnród Éireann infrastructure manager and, in so far as the essential functions of the infrastructure manager are concerned, the EFB, shall each have appropriate coordination mechanisms in place between them to ensure coordination between them and all interested railway undertakings as well as known and potential applicants referred to in Regulation 28(3).

(2) Where relevant, representatives of users of the rail freight and passenger transport services and the railway undertakings shall be invited by Iarnród Éireann infrastructure manager and, as appropriate, the EFB, to participate in a coordination process under paragraph (1) and the regulatory body may participate as an observer.

(3) The matters in relation to which coordination under paragraph (1) shall take place shall include -

- (a) the needs of the applicants referred to in paragraph (1) as respects the maintenance and development of the infrastructure capacity,
- (b) the content of the user-oriented performance targets contained in the contractual agreements referred to in Regulation 8 and the incentives referred to in paragraph 5 of Schedule 3 and their implementation,
- (c) the content and implementation of the network statement referred to in Regulation 11,
- (d) issues of intermodality and interoperability, and
- (e) any other issue related to the conditions for access, the use of the infrastructure and the quality of the services of Iarnród Éireann infrastructure manager or, as appropriate, the EFB.

(4) For the purpose of these Regulations, Iarnród Éireann infrastructure manager and, as appropriate, the EFB, having consulted with the persons referred to in paragraph (2), shall draw up and each publish on its website guidelines for an appropriate coordination mechanism.

(5) A coordination process under paragraph (1) shall take place at least annually and Iarnród Éireann infrastructure manager and, as

appropriate, the EFB, shall each publish on its website an overview of the activities undertaken under this Regulation.

- (6) Coordination under this Regulation shall be without prejudice to -
- (a) the right, referred to in Regulation 30(1), of an applicant to appeal a decision, and
  - (b) the functions conferred on the regulatory body under these Regulations including the hearing of an appeal by an applicant.

### **European Network of Infrastructure Managers**

7E. (1) With a view to facilitating the provision of efficient and effective rail services within the European Union, Iarnród Éireann infrastructure manager and the EFB shall participate and cooperate in the network of infrastructure managers from other Member States that meets to -

- (a) develop European Union rail infrastructure,
  - (b) support the timely and efficient implementation of the single European railway area,
  - (c) exchange best practices,
  - (d) monitor and benchmark performance and, for this purpose, identify common principles and practices for the monitoring and benchmarking of performance in a consistent manner,
  - (e) contribute to the rail market monitoring activities of the European Commission under Article 15 of the Directive,
  - (f) tackle cross-border bottlenecks, and
  - (g) discuss the application of Regulation 26, and Articles 37 and 40 of the Directive.
- (2) Coordination under this Regulation shall be without prejudice to -
- (a) the right, referred to in Regulation 30(1), of an applicant to appeal a decision, and
  - (b) the functions conferred on the regulatory body under these Regulations including the hearing of an appeal by an applicant.”.

### **Amendment of Regulation 11 of Regulations of 2015**

10. Regulation 11 of the Regulations of 2015 is amended by the insertion of the following paragraph after paragraph (5):

“(5A) The EFB and Iarnród Éireann infrastructure manager shall on receipt of a request in that behalf from the regulatory body furnish any of the information referred to in paragraph (5) to the regulatory body.”.

### **Amendment of Regulation 12 of Regulations of 2015**

11. Regulation 12 of the Regulations of 2015 is amended -

(a) by the substitution of the following paragraph for paragraph (1):

“(1) (a) Without prejudice to Regulation (EC) No 1370/2007<sup>7</sup> of the European Parliament and of the Council and subject to Regulation 33, any railway undertaking shall be granted, under equitable, non-discriminatory and transparent conditions, the right of access to the railway infrastructure in the State for the purpose of operating rail passenger services under these Regulations.

(b) A railway undertaking shall have the right to pick up passengers at any railway station in the State and set them down at another.

(c) The right of access referred to in subparagraph (a) shall include access to infrastructure connecting service facilities referred to in paragraph 2 of Schedule 2.”, and

(b) in paragraph (3), by the insertion of “complying with the requirements of these Regulations including Regulation 13 and any conditions for access in the network statement referred to in subparagraphs (b) and (c) of Regulation 11(2).”.

### **Regulations 12A, 12B and 12C of Regulations of 2015**

12. The Regulations of 2015 are amended by the insertion of the following Regulations after Regulation 12:

#### **“High-speed Rail**

12A. (1) The exercise of the right of access provided for in Regulation 12 as regards a high speed passenger service may only be subject to the requirements established by the regulatory body in accordance with this Regulation.

(2) Where the regulatory body, in performing its functions under Regulation 33 in relation to an intended high speed passenger service between a given place of departure and a given destination, determines that the service compromises the economic equilibrium of a public

service contract that covers the same route or an alternative route, the regulatory body shall, in its determination under Regulation 33, indicate possible changes to the service which would ensure that the conditions to grant the right of access under Regulation 12(1) are met, which changes may include a modification of the intended service.

### **Cross-border Agreements**

12B. A cross-border agreement entered into by the State shall not discriminate between railway undertakings, or restrict the freedom of railway undertakings to operate cross-border services.

### **Framework agreements**

12C. (1) Without prejudice to Articles 101, 102 and 106 of the Treaty on the Functioning of the European Union, Iarnród Éireann infrastructure manager and an applicant may enter into a framework agreement for the purposes of specifying the characteristics of the infrastructure capacity required by and offered to the applicant over a period of time exceeding one working timetable period.

(2) A framework agreement referred to in paragraph (1) -

- (a) shall not specify details relating to the train path but shall be such as to meet the legitimate commercial needs of the applicant,
- (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 relevant infrastructure by other applicants or service providers, and
- (e) may contain penalties with regard to modifications or termination of the agreement.

(3) Notwithstanding paragraph (2)(b), a framework agreement in relation to railway infrastructure which has been designated as having special infrastructure capacity under Regulation 15, may be for a period of up to 15 years where there is substantial and long-term investment justified by the applicant.

(4) A designated special infrastructure capacity agreement may be for a period in excess of 15 years in exceptional circumstances, in particular where there is large-scale and long-term investment and particularly where such investment is covered by contractual commitments including a multiannual amortisation plan.

(5) An application for a designated special infrastructure capacity agreement to which paragraphs (3) and (4) apply may specify the capacity characteristics, including the frequency, volume and quality of the train paths to be provided to the applicant for the duration of the framework agreement, in sufficient detail to ensure that these are clearly established.

(6) Iarnród Éireann infrastructure manager may reduce capacity reserved under the terms of a framework agreement to which paragraph (3) or (4) applies where, over a continuous period of at least one month, that capacity has been used less than the threshold quota stipulated in the network statement or railway infrastructure capacity has been suspended or withdrawn under Regulation 23.

(7) While respecting commercial confidentiality, the general nature of each framework agreement between Iarnród Éireann infrastructure manager and an applicant shall be made available by the infrastructure manager to any interested party.”.

### **Amendment of Regulation 13 of Regulations of 2015**

13. Regulation 13 of the Regulations of 2015 is amended -

- (a) in paragraph (2), by the substitution of “Regulation 12C” for “Regulation 21”, and
- (b) by the substitution of the following paragraphs for paragraphs (8) and (9) respectively:

“(8) (a) An applicant intending to request infrastructure capacity with a view to operating a passenger service shall give notice of the intention to the regulatory body, the EFB and Iarnród Éireann infrastructure manager, no less than 18 months before the entry into force of the working timetable to which the request for capacity relates.

(b) In order to enable the regulatory body to assess the potential economic impact on existing public service contracts of a request under subparagraph (a), the regulatory body shall inform the National Transport Authority, being the body conferred with the function to award the rail passenger service on that route in accordance with a public service contract, and any railway undertaking performing the public service contract on the route of that passenger service, of receipt of the notice under subparagraph (a) without undue delay and not later than 10 days after that receipt.

(9) An applicant shall comply with any request by the regulatory body for information required by the regulatory body to carry out its functions under this Regulation.”.

#### **Amendment of Regulation 21 of Regulations of 2015**

14. Regulation 21 of the Regulations of 2015 is amended -

(a) by the substitution of the following paragraph for paragraph (1):

“(1) A railway undertaking engaged in rail transport services shall conclude an agreement with Iarnród Éireann infrastructure manager providing for the necessary administrative, technical and financial matters required to regulate traffic control and safety matters concerning the services provided by them.”,

(b) by the substitution of the following paragraph for paragraph (2):

“(2) An agreement referred to in paragraph (1) shall contain details relating to access to and supply of services under Regulation 14.”,

(c) by the substitution of the following paragraph for paragraph (3):

“(3) The terms and conditions of an agreement concluded under paragraph (1) shall be non-discriminatory and transparent.”,

and

(d) by the deletion of paragraph (5).

#### **Amendment of Regulation 24 of Regulations of 2015**

15. Regulation 24 of the Regulations of 2015 is amended by the insertion of the following paragraphs after paragraph (2):

“(2A) In the event of a disturbance which has a potential impact on cross-border traffic, Iarnród Éireann infrastructure manager shall share any relevant information with other infrastructure managers who are responsible for network and traffic which may be affected by that disturbance.

(2B) Iarnród Éireann infrastructure manager shall cooperate with the infrastructure managers referred to in paragraph (2A) to restore the cross-border traffic to normal.

(2C) Railway undertakings operating passenger services shall put in place contingency plans and shall ensure that these contingency plans are properly coordinated to provide assistance to passengers in the event of a major disruption to services.

(2D) For the purpose of paragraph (2C) “assistance” shall be construed in accordance with Article 18 of Regulation (EC) 1371/ 2007<sup>9</sup> of the European Parliament and Council on rail passengers’ rights and obligations.”.

### **Amendment of Regulation 25 of Regulations of 2015**

16. Regulation 25 of the Regulations of 2015 is amended by the insertion of the following paragraph after paragraph 12:

“(13) Without prejudice to the generality of the foregoing, for specific future investment projects, the EFB may set higher charges on the basis of the long-term costs of such projects, including where such charging arrangements incorporate agreements on the sharing of risk associated with new investments, if, in the view of the EFB, the projects increase efficiency or cost-effectiveness or both and could not otherwise be undertaken.

(14) Where the EFB intends to modify essential elements of the infrastructure charge under this Regulation it shall make the modifications public, in the manner it considers appropriate including by publishing them on its website, at least 3 months before the deadline, referred to in Regulation 11(4), for the publication of the network statement.”.

### **Regulations 25A and 25B of Regulations of 2015**

17. The Regulations of 2015 are amended by the insertion of the following Regulations after Regulation 25:

#### **“Exceptions to charging principles – Mark-ups**

25A. (1) In ensuring that the costs incurred in funding infrastructure maintenance and operations by Iarnród Éireann infrastructure manager are fully recovered, the EFB may levy mark-ups where -

- (a) they are based on efficient, transparent and non-discriminatory principles, while guaranteeing optimal competitiveness of rail market segments, and

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<sup>9</sup> OJ No. L315, 3.12.2007, p.14

(b) the charging system used to levy such mark-ups respects the productivity increases achieved by railway undertakings.

(2) Notwithstanding the generality of paragraph (1), the level of charges introduced shall not exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return.

(3) Before approving the levy of such mark-ups, the regulatory authority shall ensure that -

(a) the market can bear the mark-ups and bear any rate of return to be applied under paragraph (2), and

(b) the EFB has evaluated their relevance for specific market segments, considering at least the pairs listed in paragraph 1 of Schedule 6 and retaining the relevant ones.

(4) The list of market segments defined by the EFB shall contain at least the three following segments:

(a) freight services;

(b) passenger services within the framework of a public service contract;

(c) other passenger services.

(5) When levying mark-ups, distinct market segments shall be defined by the EFB where the costs of providing the transport services, their market prices or their requirements for service quality differ considerably.

(6) The EFB may further distinguish market segments according to commodity or passengers transported.

(7) Market segments in which railway undertakings are not currently operating but may provide services during the period of validity of the charging system referred to in paragraph (1) shall also be defined and the EFB shall not include a mark-up in the charging system for those market segments.

(8) Where the EFB intends to levy mark-ups under this Regulation, it shall make the modifications public in the manner it considers appropriate, including by publishing them on its website, at least 3 months before the deadline for the publication of the network statement.

(9) The list of market segments shall be published in the network statement and shall be reviewed at least every five years.

(10) The regulatory body shall control that list in accordance with its powers and functions under these Regulations.

### **Discounts**

25B. Without prejudice to Articles 101, 102, 106 and 107 of the Treaty on the Functioning of the European Union, notwithstanding the direct cost principle provided for in Regulation 25(5)(a), any discount on

the infrastructure charges imposed on a railway undertaking by the EFB under Regulation 25 for any service shall meet the following criteria:

- (a) with the exception of paragraph (b), discounts shall be limited to the actual saving of the administrative cost to Iarnród Éireann infrastructure manager and, in particular, transaction cost savings, and in determining the level of discount, no account may be taken of the cost savings already internalised in the charge imposed under Regulation 25;
- (b) schemes may be introduced by the EFB and made available to all users of the infrastructure for specified traffic flows, granting time-limited discounts to encourage the development of new rail services, discounts encouraging the use of considerably underutilised lines, or promoting efficient use of infrastructure;
- (c) discounts may relate only to charges levied for a specified infrastructure section;
- (d) similar discount schemes shall apply for similar services;
- (e) discount schemes shall be applied in a non-discriminatory manner to any railway undertaking.”.

#### **Amendment of Regulation 27 of Regulations 2015**

18. Regulation 27 of the Regulations of 2015 is amended -

- (a) in paragraph (2), by the substitution of “public funding” for “state aid”, and
- (b) by the insertion of the following paragraph after paragraph (2):

“(2A) For the purposes of this Regulation, the vertically integrated undertaking shall be organised in distinct divisions that do not have a distinct legal personality within a single undertaking.”.

#### **Insertion of Regulation 28A into Regulations of 2015**

19. The Regulations of 2015 are amended by the insertion of the following Regulation after Regulation 28:

##### **“Infrastructure Manager Profit and Loss Account**

28A. (1) Over a reasonable period of time not exceeding a period of five years and under normal business conditions, the profit and loss account of Iarnród Éireann infrastructure manager shall at least balance, on the one hand, income from infrastructure charges, surpluses from commercial activities, non-refundable incomes from private sources and income from payments out of monies provided by the Oireachtas,

including advance payments out of such monies, and, on the other hand, infrastructure expenditure.

(2) Without prejudice to the generality of paragraph (1), the regulatory body may permit Iarnród Éireann infrastructure manager to exceed the period of five years referred to in paragraph (1) where the regulatory body is satisfied that exceptional circumstances apply, including a major and sudden deterioration in the economic situation in the State affecting substantially the level of traffic on the infrastructure of Iarnród Éireann infrastructure manager or the level of public financing available.”.

### **Amendment of Regulation 29 of Regulations of 2015**

20. Regulation 29 of the Regulations of 2015 is amended -

(a) in paragraph (2) -

(i) by the substitution of the following subparagraph for subparagraph (b):

“(b) without prejudice to any functions conferred on the Competition and Consumer Protection Commission in that regard, monitoring competition in the rail services market in the State including the rail freight market and, in particular, the market for high speed passenger services and monitoring the activities of Iarnród Éireann infrastructure manager and the EFB, to verify compliance in respect of the matters listed in subparagraphs (a) to (l) of paragraph (1) of Regulation 30,”,

(ii) by the insertion of the following subparagraphs after subparagraph (b):

“(bb) on its own initiative, verifying that decisions referred to in subparagraphs (a) to (l) in paragraph (1) of Regulation 30 do not discriminate unfairly against applicants,

(bc) on its own initiative, checking whether the network statement contains discriminatory clauses or creates discretionary powers for Iarnród Éireann infrastructure manager or the EFB, that may be used to discriminate against applicants,”,

and

(iii) by the deletion of subparagraph (c),

(b) by the substitution of the following paragraph for paragraph (3):

“(3) The regulatory body shall be -

- (a) a stand-alone authority which is, in organisational, functional, hierarchical and decision-making terms, legally distinct and independent from any other public or private entity,
- (b) independent in its organisation, funding decisions, legal structure and decision-making from Iarnród Éireann infrastructure manager, the EFB or an applicant, and
- (c) functionally independent from the National Transport Authority, being the body conferred with the function to award public service contracts relating to rail services.”,

(c) by the substitution of the following paragraph for paragraph (4):

“(4) The regulatory body shall be staffed and managed in a way that ensures its independence and, in particular -

- (a) it shall have the necessary human and material resources to undertake its functions under these Regulations and shall, subject to section 15 of the Act of 2005, have full authority over the recruitment and management of the staff of the body, and
- (b) the persons in charge of decisions to be taken by the regulatory body in accordance with its functions shall -
  - (i) be selected in a transparent procedure on the basis of merit, including appropriate competence and relevant experience, preferably in the field of railways or other network industries,
  - (ii) be appointed under clear and transparent rules which guarantee their independence,
  - (iii) act independently from any market interest related to the railway sector and shall not have any interest or business

relationship with any of the regulated undertakings or entities,

- (iv) withdraw from decision-making in cases which concern an undertaking with which they had a direct or indirect connection during the year before the launch of a procedure,
- (v) not seek or take instructions from any government or other public or private entity when carrying out the functions of the regulatory body.”,

(d) by the substitution of the following paragraph for paragraph (5):

“(5) The regulatory body may carry out audits or initiate external audits with Iarnród Éireann infrastructure manager, the EFB, operators of service facilities and, where relevant, railway undertakings, in order to verify compliance with accounting separation provisions under Regulation 27 and provisions on financial transparency under Regulation 7B.”,

(e) by the insertion of the following paragraphs after paragraph (5):

“(5A) In the case of the vertically integrated undertaking, the powers conferred on the regulatory body under paragraph (5) shall extend to all legal entities within the undertaking.

(5B) The regulatory body shall monitor the financial flows referred to in Regulation 7B(1), the loans referred to in Regulation 7B(4) and (5), and the debts referred to in Regulation 7B(7).”,

(f) in paragraph (7) by the insertion of “Competition and Consumer Protection Commission,” before “National Transport Authority”,

(g) in paragraph (8) -

- (i) by the substitution of the following subparagraph for subparagraph (d):

“(d) develop, with the regulatory bodies in other Member States, common principles and practices for making the decisions required of it under these Regulations, ”, and

- (ii) by the insertion of the following subparagraph after subparagraph (d):

“(dd) include, in the common principles and practices that are developed for the purposes of subparagraph (d), arrangements for the resolution of disputes that arise where matters concerning an international service require decisions of two or more regulatory bodies, and”,

and

- (h) in paragraph (9), by the insertion of the following subparagraph after subparagraph (a):

“(aa) Where matters concerning an international service require decisions of two or more regulatory bodies, the regulatory body concerned shall cooperate as necessary with the regulatory body of a Member State other than the State in preparing their respective decisions in order to bring about a resolution of the matter and for that purpose the regulatory body shall carry out its functions in accordance with this Regulation and Regulations 13, 30, 31, 32 and 33.”.

#### **Amendment of Regulation 30 of Regulations of 2015**

21. Regulation 30 of the Regulations of 2015 is amended in paragraph (1) -

- (a) in paragraph (h), by the deletion of “or”, and  
(b) by the insertion of the following subparagraphs after subparagraph (i):

- (j) traffic management,  
(k) renewal planning and scheduled or unscheduled maintenance, or  
(l) compliance with the requirements, including those regarding conflicts of interest, that are referred to in Regulations 5, 7, 7A and 7C.”.

#### **Amendment of Regulation 31 of Regulations of 2015**

22. Regulation 31 of the Regulations of 2015 is amended in paragraph (1) -

- (a) by the substitution of the following subparagraph for subparagraph (g):

“(g) access to and charging for services, under Regulation 14;”,

- (b) by the insertion of the following subparagraphs after subparagraph (g):

“(h) traffic management;

(i) renewal planning and scheduled or unscheduled maintenance;

(j) compliance with the requirements, including those regarding conflicts of interest, that are referred to in Regulations 5, 7, 7A, 7B and 7C.”.

### **Amendment of Regulation 32 of Regulations of 2015**

23. Regulation 32 of the Regulations of 2015 is amended -

- (a) by the substitution of -

(i) “Iarnród Éireann infrastructure manager” for “infrastructure manager” in each place where it occurs in paragraphs (2) to (4), and

(ii) “Iarnród Éireann infrastructure manager” for “the infrastructure manager” in each place where it occurs in paragraphs (1) and (8),

- (b) in paragraph (1), by the insertion of “, including failing to comply with a determination under Regulation 33(1) or a request for information under Regulation 7(7), 13(9), 29(6), 30(4)(a) or 31(3)(a),” after “any of the provisions of these Regulations”, and

- (c) by the substitution of the following paragraph for paragraph (8):

“(8) (a) The regulatory body may, as respects a request for information, a decision or a compliance notice under these Regulations, which in its opinion, has not been complied with or is unlikely to be complied with, apply to the High Court in a summary manner for such order as may be appropriate by way of enforcement of the request, decision or notice and the High Court may, as it thinks fit, on hearing of the application, make or refuse to make an order providing for such relief.

- (b) An application for an order under subparagraph (a) shall be by motion and the High Court, when considering the motion, may make such interim or interlocutory order as it considers appropriate.
- (c) An appeal may not be brought under paragraph (3) if the compliance notice has been subject of an order granted under subparagraph (a) (but without prejudice to the right of a person, the subject of an order granted under subparagraph (a), to apply subsequently to the High Court to have the order varied or discharged).
- (d) The High Court may direct the hearing together of an appeal brought under paragraph (3) and an application under subparagraph (a) that relate to the same compliance notice.
- (e) The High Court may, if it thinks fit, vary or discharge an order made under subparagraph (a).
- (f) Without prejudice to the powers of the High Court to enforce an order made under subparagraph (a), a person who fails to comply with such an order shall be guilty of an offence and shall be liable on summary conviction to a class A fine.”.

### **Amendment of Regulation 33 of Regulations of 2015**

24. The Regulations of 2015 are amended by the substitution of the following Regulation for Regulation 33:

#### **“Determination whether economic equilibrium of a public service contract would be compromised**

33. (1) The regulatory body may determine that it is necessary to limit the right of access under Regulation 12(1) to passenger services between a given place of departure and a given destination, when one or more public service contracts cover the same route or an alternative route, if the exercise of this right would compromise the economic equilibrium of the public service contract or contracts in question.

(2) A determination under paragraph (1) by the regulatory body shall be based on an objective economic analysis and pre-determined criteria.

(3) The regulatory body shall make a determination under paragraph (1) after a request for such determination received from any of the following:

- (a) the National Transport Authority being the award body for the public service contract relating to rail;
- (b) Iarnród Éireann infrastructure manager;
- (c) the EFB;
- (d) a railway undertaking providing a public service.

(4) A request for a determination under paragraph (1) shall be submitted by a body referred to in subparagraph (a), (b), (c) or (d) of paragraph (3) within one month from the receipt by the regulatory body of notice by an applicant of the intention to request infrastructure capacity for the intended passenger service under Regulation 13(8).

(5) Any body referred to in subparagraph (a), (b), (c) or (d) of paragraph (3) shall comply with a request by the regulatory body for information required by the regulatory body to carry out its functions under this Regulation.

(6) The regulatory body, in performing its functions under this Regulation, shall consider the information furnished to it under paragraph (5) and may consult with such persons as it considers appropriate.

(7) The regulatory body shall give a notice of its determination under paragraph (1) as quickly as possible but not later than 2 months after receipt of information furnished to it under paragraph (5) to the bodies referred to in subparagraphs (a) to (d) of paragraph (3), and in that notice shall give the grounds for its decision and specify the period within which, and the conditions under which, a request for a reconsideration by the regulatory body of its decision may be requested, within one month of the giving of that notice, by any of those bodies.

(8) Where, in its determination under paragraph (1) the regulatory body decides that the economic equilibrium of a public contract would be compromised by the intended passenger service referred to Regulation 13(8), it shall, in its notice of determination under paragraph (7), indicate possible changes to that service which would ensure that the conditions to grant the right of access provided for in Regulation 12 are met.”.

### **Amendment of Regulation 39 of Regulations of 2015**

25. Regulation 39 of the Regulations of 2015 is amended in paragraph (1) by the substitution of the following subparagraph for subparagraph (c):

- “(c) neither the railway undertaking nor any person in charge of its management has been convicted -
- (i) of serious or repeated offences, under the laws of the State or the laws of a state other than the State, to fulfil social or labour law obligations, including laws relating to occupational health and safety and, in the case of a company

- seeking to operate cross-border freight transport subject to customs procedures, laws relating to customs, or
- (ii) of serious offences resulting from breaches of law giving effect to any applicable binding collective agreements.”.

### **Amendment of Schedule 5 to Regulations of 2015**

26. Schedule 5 to the Regulations of 2015 is amended -

- (a) in paragraph 3, by the insertion of “and requests received after the deadline shall also be considered by the infrastructure manager” after “timetable”,
- (b) by the substitution of the following paragraph for paragraph 5:

“5. The infrastructure manager shall prepare and publish a draft working timetable at the latest 4 months after the deadline referred to in paragraph 3.”, and

- (c) by the insertion of the following paragraphs after paragraph 5:

“6. The infrastructure manager shall decide on the requests it receives after the deadline referred to in paragraph 3 in accordance with a process published in the network statement. The infrastructure manager may reschedule an allocated train path if it is necessary to ensure the best possible matching of all train path requests and if it is approved by the applicant to which the train path had been allocated and the infrastructure manager shall update the draft working timetable no later than one month before the change of the working timetable in order to include all train paths allocated after the deadline referred to in paragraph 3.

7. In the case of trains crossing from one network to another which arrive with a presumed delay of not more than 10 hours and, from 14 December 2019, 18 hours, the infrastructure manager of the other network shall not consider the train path cancelled or request application for another train path, including if it decides to allocate a different train path, unless the applicant informs the infrastructure manager that the train will not cross to the other network. The infrastructure manager shall communicate to the applicant the updated or new train path without delay, including, if different, the link between that train path number and the train path number of the cancelled train path.

8. As regards temporary restrictions of the capacity of railway lines, for reasons such as infrastructure works, including associated speed restrictions, axle load, train length, traction, or structure gauge ('capacity restrictions'), of a duration of more than seven consecutive days and for which more than 30 per cent of the estimated traffic volume on a railway line per day is cancelled, re-routed or replaced by other modes of transport, the infrastructure managers concerned shall publish all capacity restrictions and the preliminary results of a consultation with the applicants for a first time at least 24 months, to the extent they are known, and, in an updated form, for a second time at least 12 months before the change of the working timetable concerned.

9. The infrastructure managers concerned shall also create a mechanism whereby they jointly discuss those capacity restrictions, if the impact of the capacity restrictions is not limited to one network, with interested applicants, other infrastructure managers referred to in Regulation 26(1) and the main operators of service facilities concerned when they are published for the first time, unless the infrastructure managers and the applicants agree that such a mechanism is not needed. The joint discussions shall help prepare timetables, including the provision of diversionary routes.

10. When publishing capacity restrictions under paragraph 8 for the first time, the infrastructure manager shall launch a consultation with the applicants and the main operators of services facilities concerned on the capacity restrictions. Where a coordination under paragraph 11 is required between the first and second publication of capacity restrictions, infrastructure managers shall consult with applicants and the main operators of service facilities concerned a second time between the end of that coordination and the second publication of the capacity restriction.

11. Before publishing capacity restrictions under paragraph 8, if the impact of the capacity restrictions is not limited to one network, the infrastructure managers concerned, including infrastructure managers that might be impacted by the rerouting of trains, shall coordinate between themselves capacity restrictions that could involve a cancellation, re-routing of a train path or a replacement by other modes.

12. The coordination before the second publication shall be completed:

- (a) no later than 18 months before the change of the working timetable if more than 50 per cent of the estimated traffic volume on a railway line per day is cancelled, re-routed or replaced by other modes of transport for a duration of more than 30 consecutive days;
- (b) no later than 13 months and 15 days before the change of the working timetable period if more than 30 per cent of the estimated traffic volume on a railway line per day is cancelled, re-routed or replaced by other modes of transport for a duration of more than seven consecutive days;
- (c) no later than 13 months and 15 days before the change of the working timetable period if more than 50 per cent of the estimated traffic volume on a railway line per day is cancelled, re-routed or replaced by other modes of transport for a duration of seven consecutive days or less.

13. The infrastructure managers shall, if necessary, invite the applicants active on the lines concerned and the main operators of service facilities concerned to get involved in that coordination.

14. As regards capacity restrictions of a duration of seven consecutive days or less that need not be published under paragraph 8 and for which more than 10 per cent of the estimated traffic volume on a railway line per day is cancelled, re-routed or replaced by other modes, that occur during the following timetable period and that the infrastructure manager becomes aware of no later than 6 months and 15 days before the change of the working timetable, the infrastructure manager shall consult the applicants concerned on the envisaged capacity restrictions and communicate the updated capacity restrictions at least four months before the change of the working timetable.

15. The infrastructure manager shall provide details on the offered train paths for passenger trains no later than four months and for freight trains no later than one month before the beginning of the capacity restriction, unless the

infrastructure manager and the concerned applicants agree on a shorter lead time.

16. Infrastructure managers may decide to apply more stringent thresholds for capacity restrictions based on lower percentages of estimated traffic volumes or shorter durations than indicated in this Schedule or to apply criteria in addition to the ones mentioned in this Schedule, pursuant to a consultation with applicants and facility operators. They shall publish the thresholds and criteria for clustering capacity restrictions in their network statements under paragraph 3 of Schedule 4.

17. The infrastructure manager may decide not to apply the periods laid down in paragraphs 8 to 13, if the capacity restriction is necessary to re-establish safe train operations, the timing of the restrictions is beyond the control of the infrastructure manager, the application of those periods would be cost ineffective or unnecessarily damaging in respect of asset life or condition, or if all concerned applicants agree. In those cases and in case of any other capacity restrictions that are not subject to consultation under other provisions of this Schedule, the infrastructure manager shall consult the applicants and the main operators of service facilities concerned forthwith.

18. The information to be provided by the infrastructure manager under paragraph 8, 14, 15 or 17 shall include -

- (a) the planned day,
- (b) time of day, and, as soon as it can be set, the hour of the beginning and of the end of the capacity restriction,
- (c) the section of line affected by the restriction, and
- (d) where applicable, the capacity of diversionary lines.

19. The infrastructure manager shall publish information referred to in paragraph 18, or a link where it can be found, in its network statement as referred to in paragraph 3 of Schedule 4 and the infrastructure manager shall keep this information up to date.

20. As regards the capacity restrictions of a duration of at least 30 consecutive days and affecting more than 50 per cent of the estimated traffic volume on a railway line, the infrastructure manager shall provide the applicants upon their request during the first round of consultation with a comparison of the conditions to be encountered under at least two alternatives of capacity restrictions and the infrastructure manager shall design those alternatives on the basis of the input provided by the applicants at the time of their requests and jointly with them.

21. The comparison referred to in paragraph 20 shall, for each alternative, include at least -

- (a) the duration of the capacity restriction,
- (b) the expected indicative infrastructure charges due,
- (c) the capacity available on diversionary lines,
- (d) the available alternative routes, and
- (e) the indicative travel times.

22. Before making a choice between the alternatives of capacity restrictions, the infrastructure manager shall consult the interested applicants and take into account the impacts of the different alternatives on those applicants and on the users of the services.

23. As regards the capacity restrictions of a duration of more than 30 consecutive days and affecting more than 50 per cent of the estimated traffic volume on a railway line, the infrastructure manager shall establish criteria for which trains of each type of service should be re-routed, taking into account the applicant's commercial and operational constraints, unless those operational constraints result from managerial or organisational decisions of the applicant, and without prejudice to the aim of reducing costs of the infrastructure manager in accordance with any incentives included in a contractual agreement under Regulation 8(2).

24. The infrastructure manager shall publish in the network statement those criteria together with a preliminary allocation of the remaining capacity to the different types of train services when it acts under paragraph 8.

25. After the end of the consultation and without prejudice to the obligations of the infrastructure manager as referred to in paragraph 3 of Schedule 4, the infrastructure manager, based on the feed-back it received from the applicants, shall provide the railway undertakings concerned with an indicative break-down by type of service of the remaining capacity.”.

**Amendment of Schedule 6 to Regulations of 2015**

27. Paragraph 1 of Schedule 6 to the Regulations of 2015 is amended by the substitution of “under Regulation 25A” for “according to Regulation 25”.



GIVEN under my Official Seal,  
30 September, 2020.

EAMON RYAN,  
Minister for Transport.

EXPLANATORY NOTE

*(This does not form part of the instrument and does not purport to be a legal interpretation)*

The purpose of these Regulations is to give further effect to Directive 2012/34/EU and to transpose amending Directive (EU) 2016/2370 in relation to regulation of the governance and organisational structures for railway infrastructure managers and the rail transport activities of railway undertakings.

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