

Date of Request:	Request and ORR's response
20/03/07	<p>Request:</p> <p>Request for information received from Poland about the process in Britain for appeals against access charging schemes imposed by infrastructure managers.</p> <p>ORR's response</p> <p>Firstly, we note that you have stated that in Poland, “neither the railway undertaking nor the railway undertaking's chamber or organisation can appeal against the access charging scheme prepared by the infrastructure manager”. Chapter IV, Article 30 of Directive 2001/14/EC, which can be found at http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_075/l_07520010315en00290046.pdf, sets out Member States' obligation to establish an independent regulatory body. We understand that in Poland the Rail Transport Office (Urząd Transportu Kolejowego) is the appeal body in relation to a number of issues, including the charging scheme.</p> <p>Some of the tasks of the President of the Railway Transport Office include:</p> <ul style="list-style-type: none"> • Approval and co-ordination of charges for the use of the network in accordance with charging principles laid out in the Directive, • Monitoring non-discriminatory access of train operators to rail infrastructure, • Monitoring fair treatment of all train operators by infrastructure managers, especially with regard to capacity allocation and charging, • Monitoring of access charges calculated by the infrastructure manager and additional fees for the additional services, • Handling the complaints of train operators related to: <ul style="list-style-type: none"> ➢ the network statement, ➢ the capacity allocation and charges for the use of rail infrastructure. <p>Chapter IV, Article 30, provides the following, which we believe addresses the first point you have made in your email:</p> <ul style="list-style-type: none"> • Member States shall establish a regulatory body. This body shall be independent in its decision making from any infrastructure manager, charging body or applicant. The body shall function according to the principles outlined in this Article whereby appeal and regulatory functions may be attributed to separate bodies. • An applicant shall have a right to appeal to the regulatory body if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager or where appropriate the railway undertaking concerning:

- the charging scheme;
- level or structure of infrastructure fees which it is, or may be, required to pay.
 - The regulatory body shall ensure that charges set by the infrastructure manager shall comply with chapter II and are non-discriminatory.

Focusing on your query about the situation in Britain, anyone seeking access to the national rail network in order to operate trains needs to enter into a track access contract with the infrastructure manager. Under the Railways Act 1993 train operators and others may only enter into contracts with another party giving them permission to access that network if the Office of Rail Regulation (ORR) so directs. Proposed contracts that have been negotiated by the parties require ORR's approval, as do subsequent amendments to them. Where agreement has not been reached on the terms of a contract (including on charging issues) or a subsequent amendment to permit more extensive use, the proposed access beneficiary can apply to ORR to issue directions obliging the infrastructure manager to enter into or amend a contract as determined by ORR. Under the Railways Infrastructure (Access and Management) Regulations 2005 (the Regulations) which transposes the provisions of Directive 2001/14/EC, appeals can be brought against an infrastructure manager's charging regime.

In the event of a rail operator appealing against the charging scheme of the infrastructure manager, appeals must be submitted to ORR. Further information and guidance on appeals to ORR under the Regulations can be found on our website at <http://www.rail-reg.gov.uk/upload/pdf/275.pdf>, these include details of the appeals process and what factors ORR looks for whilst deciding an appeal.

ORR sets the charging framework and specific charging rules for Network Rail, the infrastructure manager. Part of ORR's role is to ensure that train operators are not charged inappropriately high prices by Network Rail for access to the national network, whilst also ensuring that the access charges paid by the train operator are sufficient to enable Network Rail to recover the costs of operating and maintaining its network. ORR has published criteria setting out the charges that we would expect to approve in both freight and passenger track access contracts between the train operator and Network Rail. These can be found on our website at <http://www.rail-reg.gov.uk/upload/pdf/289-frghtcp3ed.pdf>.