



Railways Regulations 2019

Patsy Reddy, Governor-General

Order in Council

At Wellington this 25th day of November 2019

Present:

Hon Kelvin Davis presiding in Council

These regulations are made under sections 59 and 60 of the Railways Act 2005 on the advice and with the consent of the Executive Council.

Contents

	Page
1 Title	2
2 Commencement	2
3 Interpretation	2
4 Transitional, savings, and related provisions	2
<i>Annual safety charge</i>	
5 Amount of annual safety charge	3
6 Maximum annual safety charge	3
7 When licence holder is both rail operator and access provider	4
8 Payment	4
9 When licence is amended, revoked, or surrendered	4
<i>Other fees and charges</i>	
10 Licence application fees	5
11 Fees for other Agency activities	6
12 Costs of safety assessments	7
13 Charges to reimburse Agency expenses	7

	<i>Administration of charges and fees</i>	
14	Charges and fees do not include GST	7
15	Waiver and refund of charges and fees	8
	<i>Matters prescribed for the Act</i>	
16	Rail participants	8
17	Exemptions	8
18	Exclusions	8
	<i>Revocation of 2008 regulations</i>	
19	Revocation	9
	Schedule 1	9
	Transitional, savings, and related provisions	

Regulations

1 Title

These regulations are the Railways Regulations 2019.

2 Commencement

These regulations come into force on 1 January 2020.

3 Interpretation

(1) In these regulations, unless the context otherwise requires,—

Act means the Railways Act 2005

network traffic kilometre, in relation to a railway line whose use is controlled by a licensed access provider,—

(a) means a kilometre travelled by a rail vehicle or a coupled group of rail vehicles on that railway line while using the line in accordance with the access provider's purpose in permitting access to the line; but

(b) does not include a kilometre travelled by a rail maintenance vehicle that is carrying out maintenance work

passenger service kilometre means a kilometre travelled by a rail vehicle or a coupled group of rail vehicles that is available to carry passengers

year means a 12-month period from 1 July to the following 30 June.

(2) Any term or expression that is defined in the Act and used, but not defined, in these regulations, has the same meaning as in the Act.

4 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

Annual safety charge

5 Amount of annual safety charge

- (1) This regulation and regulations 6 to 9 apply to a licence holder that is a rail operator or an access provider.
- (2) The licence holder must pay annual safety charges to the Agency for the purpose of meeting, or assisting in meeting, the costs and expenses incurred by the Agency in performing or exercising functions, duties, or powers, or in providing services, under—
 - (a) the Act; or
 - (b) the Land Transport Management Act 2003; or
 - (c) the Land Transport Act 1998.
- (3) Annual safety charges—
 - (a) do not apply to the activities to which regulations 10 to 12 apply; and
 - (b) are subject to the maximum annual safety charges set out in regulation 6.
- (4) The licence holder must pay a fixed annual safety charge of \$400 for the licence.
- (5) A licence holder that is a rail operator must also pay a variable annual safety charge that is calculated in accordance with the following formula:

$$k \times 13.2 \text{ cents} = \$c$$

where—

- k* is the number of passenger service kilometres assessed by the Agency as having been operated by the licence holder during the previous year
- \$c* is the charge payable.

- (6) A licence holder that is an access provider must also pay a variable annual safety charge that is calculated in accordance with the following formula:

$$k \times 6.6 \text{ cents} = \$c$$

where—

- k* is the number of network traffic kilometres assessed by the Agency as having been operated during the previous year on the railway line whose use is controlled by the licence holder
- \$c* is the charge payable.

6 Maximum annual safety charge

- (1) The total annual safety charge payable by a licence holder under regulation 5 must not exceed the following:
 - (a) \$6,000 for a rail operator that operated more than 250,000 but not more than 2,500,000 passenger service kilometres during the previous year:

- (b) \$3,000 for a rail operator that operated more than 25,000 but not more than 250,000 passenger service kilometres during the previous year:
 - (c) \$1,500 for a rail operator that operated not more than 25,000 passenger service kilometres during the previous year:
 - (d) \$6,000 for an access provider with more than 500,000 but not more than 5,000,000 network traffic kilometres operated on its railway line during the previous year:
 - (e) \$3,000 for an access provider with more than 50,000 but not more than 500,000 network traffic kilometres operated on its railway line during the previous year:
 - (f) \$1,500 for an access provider with not more than 50,000 network traffic kilometres operated on its railway line during the previous year.
- (2) There is no maximum annual safety charge under this regulation for—
- (a) a rail operator that operated more than 2,500,000 passenger service kilometres in the previous year; or
 - (b) an access provider that had more than 5,000,000 network traffic kilometres operated on its railway line in the previous year.
- (3) In this regulation, any reference to a number of passenger service kilometres or network traffic kilometres is a reference to the number of those kilometres assessed by the Agency for the purposes of this regulation.

7 When licence holder is both rail operator and access provider

- (1) This regulation applies to a licence holder that is both a rail operator and an access provider and whose licence covers both classes of rail participant.
- (2) If maximum annual safety charges apply to the licence holder as both a rail operator and an access provider under regulation 6, the licence holder must pay the greater of the 2 applicable maximum amounts.
- (3) In every other case, the licence holder must pay the annual safety charges payable under regulation 5 for each class of rail participant covered by the licence.

8 Payment

- (1) The total annual safety charge payable by a licence holder under regulation 5 must be paid by 4 instalments due on 1 October, 1 January, 1 April, and 1 July.
- (2) For the first year of a licence, the total annual safety charge is payable—
 - (a) by a single payment on 1 October of the following year; and
 - (b) on a pro rata basis according to when the licence was granted.

9 When licence is amended, revoked, or surrendered

- (1) This regulation applies if—

- (a) a licence that relates to 1 class of rail participant (rail operator or access provider) is amended under section 26 of the Act by adding a second class of rail participant (access provider or rail operator); or
 - (b) a licence that relates to both classes of rail participant is amended under that section because the licence holder ceases to be a rail operator or an access provider; or
 - (c) a licence is revoked under section 24 or 26 of the Act or surrendered under section 19(2) of the Act.
- (2) For the purposes of subclause (1)(a), annual safety charges are payable on a pro rata basis—
- (a) for the initial class of rail participant up to the date on which the licence is amended; and
 - (b) after that date, for both classes of rail participant.
- (3) For the purposes of subclause (1)(b),—
- (a) annual safety charges are payable on a pro rata basis up to the date on which the licence is amended; and
 - (b) after that date, for the remaining class of rail participant; and
 - (c) the Agency must refund to the licence holder any annual safety charges paid in respect of—
 - (i) the ceased class of rail participant; and
 - (ii) any time after the date on which the licence is amended.
- (4) For the purposes of subclause (1)(c),—
- (a) annual safety charges are payable on a pro rata basis up to the date on which the licence is revoked or surrendered; and
 - (b) the Agency must refund to the licence holder any annual safety charges paid in respect of any time after the date on which the licence is revoked or surrendered.

Other fees and charges

10 Licence application fees

- (1) For the purposes of section 16(1)(c) of the Act, the fee that must accompany an application for a licence is \$120.
- (2) After an application for a licence has been considered and decided by the Agency, the applicant must pay to the Agency a fee that is calculated in accordance with the following formula:

$$(h - 1) \times \$120 = \$f$$

where—

h is the sum of the number of hours (including part-hours) spent by each employee or agent of the Agency in considering and deciding the application (including consideration and approval of the applicant's safety case under section 32 of the Act)

\$f is the fee payable.

11 Fees for other Agency activities

- (1) This regulation imposes a fee for the following activities of the Agency:
- (a) assisting, under an agreement entered into under subclause (4), in the development of any of the following:
 - (i) an application under section 16 of the Act:
 - (ii) a proposed safety case to accompany a licence application under section 29 of the Act:
 - (iii) a replacement or variation of an approved safety case for a licence holder that proposes to apply under section 33 of the Act for approval of the replacement or variation:
 - (b) considering and deciding on the replacement or variation of a safety case under section 35 of the Act:
 - (c) activities in relation to any non-compliance with the Act by a rail participant.
- (2) A rail participant for which the Agency performs an activity must pay to the Agency a fee that is calculated in accordance with the following formula:

$$h \times \$120 = \$f$$

where—

h is the sum of the number of hours (including part-hours) spent by each employee or agent of the Agency in performing the activity

\$f is the fee payable.

- (3) For the purposes of subclause (1)(c), the activities include the following:
- (a) suspending or imposing temporary conditions on a licence under section 23 of the Act:
 - (b) revoking or imposing permanent conditions on a licence under section 24 of the Act:
 - (c) prohibiting or imposing conditions on the operation or use of a rail vehicle, a class of rail vehicle, or any railway infrastructure under section 28 of the Act:
 - (d) detaining or immobilising a rail vehicle, a class of rail vehicle, or any railway infrastructure to prevent its operation or use under section 28 of the Act:

- (e) requiring the replacement or variation of an approved safety case under section 34 of the Act;
 - (f) requiring the preparation of a safety improvement plan under section 36 of the Act;
 - (g) giving notice that remedial action by a rail participant is necessary under section 42 of the Act.
- (4) The Agency may enter into an agreement with a rail participant under which the Agency will provide the assistance referred to in subclause (1)(a).

12 Costs of safety assessments

- (1) A rail participant must reimburse the Agency for costs incurred in carrying out, or in paying for the carrying out of, a safety assessment under section 37 of the Act.
- (2) The rail participant must also pay to the Agency a charge that is calculated in accordance with the following formula:

$$h \times \$120 = \$c$$

where—

h is the sum of the number of hours (including part-hours) spent by each employee or agent of the Agency or by any safety assessor in performing the activity

\$c is the charge payable.

13 Charges to reimburse Agency expenses

- (1) A rail participant that is required to pay a fee or costs under regulation 10, 11, or 12 for an activity of the Agency must also pay charges under this regulation.
- (2) The rail participant must pay to the Agency a charge for any reasonable expenses (including for travelling time and accommodation) incurred by the employee or agent of the Agency in carrying out the activity.
- (3) The rail participant must pay to the Agency a charge in the amount of the following expenses incurred by the Agency in engaging a contractor to carry out the activity:
 - (a) the contractor's remuneration;
 - (b) any reasonable expenses (including for travelling time and accommodation) incurred by the contractor in carrying out the activity.

Administration of charges and fees

14 Charges and fees do not include GST

Charges and fees under these regulations are exclusive of goods and services tax.

15 Waiver and refund of charges and fees

The Agency may waive or refund the whole or any part of a charge or fee payable under regulation 5, 10, 11, or 12 if—

- (a) the activity or application is of a minor nature and the work of, or expense to, the Agency is reduced to an extent that justifies the waiver or refund; or
- (b) in all the circumstances of the case, it would be inappropriate to require the charge or fee to be paid.

Matters prescribed for the Act

16 Rail participants

- (1) The following are rail participants:
 - (a) the Driving Creek Railway of Coromandel; and
 - (b) the Whangaparaoa Narrow Gauge Railway of Auckland.
- (2) The rail participants specified in subclause (1) must hold a licence granted under section 17 of the Act.

17 Exemptions

- (1) A rail participant is exempt from the provisions of the Act if—
 - (a) the rail participant is involved in a mining or forestry business; and
 - (b) the rail participant, in the course of its mining or forestry operations,—
 - (i) carries employees or freight but does not carry members of the public; and
 - (ii) is subject to any regulations made under the Health and Safety at Work Act 2015.
- (2) A licence holder that is a rail operator or an access provider is exempt from a variable annual safety charge payable under regulation 5(5) or (6) if the licence holder is—
 - (a) a charitable entity within the meaning of section 4(1) of the Charities Act 2005; or
 - (b) a volunteer organisation.
- (3) In subclause (2)(b), **volunteer organisation** means a group of volunteers (whether incorporated or unincorporated) working together for 1 or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer organisation.

18 Exclusions

A railway line is excluded from the definition of railway line in section 4 of the Act if—

- (a) the line is operated by a mining or forestry business; and
- (b) the only passengers carried on the line are employees of the mining or forestry business; and
- (c) the only freight carried on the line is the property or the product of the mining or forestry business; and
- (d) the operation carried out on the line is subject to any regulations made under the Health and Safety at Work Act 2015.

Revocation of 2008 regulations

19 Revocation

The Railways Regulations 2008 (SR 2008/108) are revoked.

Schedule 1
Transitional, savings, and related provisions

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Part 1
Provision relating to these regulations as made

1 Transitional fees and charges after commencement of these regulations

- (1) Despite the revocation of the Railways Regulations 2008 (the **2008 Regulations**) by regulation 19 of these regulations,—
 - (a) annual safety fees payable under regulation 4(1) and (2) of the 2008 Regulations as in force immediately before 1 January 2020 continue to be payable, on a pro rata basis, from 1 July 2019 to 31 December 2019; and
 - (b) annual safety charges payable under regulation 5 of these regulations as in force on and after 1 January 2020 are payable, on a pro rata basis, from that date to 30 June 2020; and
 - (c) fees payable under regulation 4(3) of the 2008 Regulations as in force immediately before 1 January 2020 continue to be payable from 1 July 2019 to 31 December 2019; and
 - (d) charges payable at an hourly rate under regulation 7 of the 2008 Regulations as in force immediately before 1 January 2020 continue to be payable from 1 July 2019 to 31 December 2019; and
 - (e) fees and costs payable under regulation 11 or 12 of these regulations as in force on and after 1 January 2020 are payable from that date to 30 June 2020.

- (2) The Agency must refund any fees or charges under regulation 4 or 7 of the 2008 Regulations (as in force immediately before 1 January 2020) paid in relation to the period 1 January 2020 to 30 June 2020.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 January 2020, revoke and replace the Railways Regulations 2008 (the **2008 regulations**) and provide for the payment of fees and charges by rail participants (including licence holders). Compared with the 2008 regulations, these regulations—

- simplify the charges and fees scheme by reducing the number of categories of licence holders required to pay annual safety charges; and
- increase the range of activities that attract a fee charged at an hourly rate, aligning the fee more closely with the nature of the activity; and
- add a new charge to reimburse the New Zealand Transport Agency for expenses incurred in carrying out specified activities; and
- provide that all charges and fees prescribed do not include goods and services tax; and
- exempt some charitable entities and volunteer organisations from some of the annual safety charges; and
- provide for the charges and fees to be paid during the period of transition from the old scheme to the new scheme.

Regulatory impact assessment

The New Zealand Transport Agency produced a regulatory impact assessment on 14 December 2018 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact assessment can be found at—

- <https://www.transport.govt.nz/about/governance/ris-bccs/>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

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These regulations are administered by the Ministry of Transport.