



Land Transport (Railway Track User Charges) Regulations 2021

Patsy Reddy, Governor-General

Order in Council

At Wellington this 27th day of September 2021

Present:

Her Excellency the Governor-General in Council

These regulations are made under sections 167(1)(j) and (k) and 168 of the Land Transport Act 1998 on the advice and with the consent of the Executive Council.

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Schedule 1 7**Transitional, savings, and related provisions****Regulations****1 Title**

These regulations are the Land Transport (Railway Track User Charges) Regulations 2021.

2 Commencement

These regulations come into force on 15 November 2021.

3 Purpose

The purpose of these regulations is to—

- (a) ensure that rail operators contribute to the national land transport fund by imposing charges for their use of the national rail network for freight services; and
- (b) establish a framework for the management of railway track user charges.

4 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Land Transport Act 1998

consignment (or **consignment of goods**), in relation to a contract for the transportation of goods, means a quantity of goods that is to be transported in its entirety from one place to another

financial year, in relation to railway track user charges, means the period of 12 months beginning on 1 July and ending with the close of 30 June

freight service has the meaning set out in regulation 5

goods has the same meaning as in section 2(1) of the Act

GTK (gross tonne kilometres), in relation to calculating the amount of railway track user charges payable, has the meaning given in the formula in regulation 9

manifest, in relation to a consignment of goods transported under a contract for the transportation of goods, means a document that describes the consignment, including by specifying the weight of the consignment

rail operator has the same meaning as in section 4(1) of the Railways Act 2005

railway has the same meaning as in section 4(1) of the Railways Act 2005

railway track user charges means the charges payable under these regulations for use of the railway

unladen weight, in relation to a container used to transport goods, means—

- (a) the actual unladen weight in tonnes of the container, if that weight is known to the rail operator and the freight customer whose goods are being transported in the container; or
- (b) otherwise,—
 - (i) 2.5 tonnes, for a container that is 6.1 metres long; or
 - (ii) 4.2 tonnes, for a container that is 12.2 metres long.

5 Meaning of freight service

- (1) In these regulations, **freight service** means a service that involves the transportation of goods for hire or reward by 1 or more locomotives and 1 or more rail wagons.
- (2) A freight service includes the movement of an unladen rail wagon for the purpose of relocating the wagon to a place from which it will be used to again transport goods for hire or reward.
- (3) In subclause (1), **goods** does not include—
 - (a) the luggage of any passenger; or
 - (b) materials, plant, or equipment used in the maintenance, renewal, or upgrade of any rail infrastructure.

6 Transitional, savings, and related provisions

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

Railway track user charges

7 Rail operators must pay railway track user charges for freight services

A rail operator who uses the railway for operating freight services must pay railway track user charges in accordance with these regulations.

8 Charges paid quarterly to Agency

A rail operator who is required to pay railway track user charges must pay the charges to the Agency quarterly for each financial year.

9 Amount of quarterly railway track user charges

- (1) The amount of railway track user charges payable by a rail operator for a quarter in a financial year referred to in subclause (2) is the amount calculated in accordance with the following formula:

$$(\text{GTK} \div 1,000) \times \$r = \$c$$

where—

GTK is the total number of gross tonne kilometres travelled by the freight services operated by the rail operator during the quarter

\$r is the rate set out in subclause (2) for the financial year in which the quarter occurs

\$c is the amount of railway track user charges for the quarter.

- (2) Column 2 of the following table contains the rates (\$ per 1,000 GTK) that apply to the calculation of railway track user charges for the quarters of the financial years set out in Column 1:

Column 1	Column 2
Financial year	Rate of railway track user charge (\$ per 1,000 GTK)
2021/2022	1.18
2022/2023	1.65
Subsequent years	2.11

10 Determination of GTK

For the purposes of the formula in regulation 9(1), GTK for a quarter must be determined by,—

- (a) in relation to locomotives, rail wagons, and containers used by the freight service during the quarter,—
 - (i) determining the GTK of each locomotive, rail wagon, and container by multiplying its unladen weight by the number of kilometres it travelled during the quarter; and
 - (ii) adding those GTK amounts to yield a total for the quarter; and
- (b) in relation to goods transported by the freight service during the quarter,—
 - (i) determining the GTK for each consignment of goods by multiplying its weight by the number of kilometres it travelled during the quarter; and
 - (ii) adding those GTK amounts to yield a total for the quarter; and
- (c) adding the totals in paragraphs (a)(ii) and (b)(ii) to yield the GTK for the quarter.

11 When charges payable

The rail operator must pay railway track user charges for a quarter by the end of the month immediately following the end of the quarter.

12 How charges paid

- (1) Payment of railway track user charges for a quarter must be accompanied by—

- (a) an invoice issued by the rail operator that specifies—
 - (i) the amount of railway track user charges payable for the quarter; and
 - (ii) the GTK for the quarter; and
- (b) a declaration by the rail operator, signed by a person authorised by the operator, that—
 - (i) explains how the GTK was calculated; and
 - (ii) declares that the GTK was calculated in accordance with regulation 10; and
 - (iii) declares that all information accompanying the payment is correct.
- (2) When considering a declaration, the Agency may treat the contract weight of any consignment of goods as conclusive evidence of the weight of the consignment for the purposes of regulation 10(b).
- (3) The rail operator must give the Agency any additional information or supporting documentation the Agency requests.
- (4) In subclause (2), **contract weight**, in relation to a consignment of goods transported under a contract for the transportation of goods, means the weight of the goods that is specified in the manifest relating to that consignment.

13 Additional charge for late payment

- (1) If any railway track user charges remain unpaid 2 months after the date on which they are payable under regulation 11, the rail operator who is liable to pay the railway track user charges must pay an additional charge equal to 10% of the unpaid amount.
- (2) The invoice required under regulation 12 must include any additional charge under this regulation.

14 Charges are land transport revenue

Railway track user charges (including any additional charges under regulation 13) are land transport revenue for the purposes of the Land Transport Management Act 2003 (*see* section 6(c) of that Act and section 168AA of the Land Transport Act 1998).

Other matters

15 Administration fee

- (1) This regulation imposes on a rail operator who must pay railway track user charges an administration fee for work performed by the Agency under these regulations in relation to that rail operator.

- (2) The rail operator for whom the Agency performs work must pay to the Agency a fee that is calculated in accordance with the following formula:

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

where—

h is the number of hours (including part-hours) a person authorised by the Agency spent in performing the work

\$f is the fee payable.

16 GST not included in railway track user charges, etc

Railway track user charges, penalties, and administration fees under these regulations are exclusive of goods and services tax payable under the Goods and Services Tax Act 1985.

Schedule 1

Transitional, savings, and related provisions

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Part 1

Provisions relating to these regulations as made

1 Railway track user charges for October–December 2021

- (1) This clause applies to the second quarter of the 2021/2022 financial year.
- (2) Railway track user charges are payable in relation to use of the rail network between 15 November 2021 (the date on which these regulations come into force) and 31 December 2021, and regulation 9 applies as if a reference to a quarter were a reference to that period.

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 15 November 2021, establish a scheme of railway track user charges to be paid by rail operators who use the railway for operating freight services. Railway track user charges reflect these operators' use of the national rail network and are paid into the national land transport fund.

Regulations 4 and 5 contain definitions. *Regulation 5* defines freight service as a service that involves the transportation of goods for hire or reward by 1 or more locomotives and 1 or more rail wagons. *Regulation 5* also provides that—

- the luggage of any passenger is not included;
- an unladen rail wagon being relocated to be used again for transporting goods for hire or reward remains part of a freight service.

Regulations 7 to 14 provide for the way in which the railway track user charges scheme operates as follows:

- *regulation 7* imposes charges on rail operators who operate freight services;
- *regulation 8* requires the relevant rail operators to pay charges quarterly to the New Zealand Transport Agency;
- *regulations 9 and 10* describe the amount of charges for each quarter and how they are calculated;
- *regulation 11* provides when charges must be paid;

- *regulation 12* describes how the rail operator pays charges and requires the operator to explain its calculations:
- *regulation 13* imposes an additional charge in relation to railway track user charges not paid on time:
- *regulation 14* provides that charges and any late payment penalties are land transport revenue for the purposes of the Land Transport Management Act 2003, so that they are paid into the national land transport fund.

Regulations 15 and 16 provide for the following matters:

- the rail operator must pay an administration fee (*regulation 15*):
- GST is not included in charges, penalties, and administration fees (*regulation 16*).

Schedule 1 is for transitional, savings, and related provisions. *Part 1* makes clear that, in the October–December quarter of the 2021/2022 financial year, railway track user charges are payable from the date on which these regulations come into force (15 November 2021) rather than 1 October 2021.

These regulations are a confirmable instrument under section 47B of the Legislation Act 2012. This instrument is revoked at the close of 31 December 2022 (which is the applicable deadline under section 47C(1)(b) of that Act), unless earlier confirmed by an Act of Parliament.

Regulatory impact statement

The Ministry of Transport produced a regulatory impact statement on 28 March 2021 to help inform the decisions taken by the Government relating to the contents of this instrument.

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

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

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 30 September 2021.

These regulations are administered by the Ministry of Transport.