

## SCHEDULE 1

Regulation 6(4)

### ACCESS FEES

1. Subject to rules 2 to 5, a fee for the use of infrastructure shall include, and shall include only: –
  - (a) an amount equal to the estimated costs reasonably attributable to the operation of trains in pursuance of the agreement under which the fee is payable; and
  - (b) an amount determined in accordance with rule 2 in respect of a share of estimated common costs.
2. The amount referred to in rule 1(b) shall be such amount as may be determined by agreement between the infrastructure manager and the person by whom the fee is payable or a person acting on his behalf.
3. In determining a fee, account shall be taken of the nature of the service, the time of the service, the market situation and the type and degree of wear and tear of the infrastructure.
4. A fee may be increased or decreased by an amount determined by agreement between the infrastructure manager and the person by whom the fee is payable or a person acting on his behalf to take account of special or exclusive rights to use the infrastructure granted to the person by whom the fee is payable or to any other person.
5. A fee may be increased or decreased, in accordance with any performance incentive regime agreed between the infrastructure manager and the person by whom the fee is payable or a person acting on his behalf, by an amount so determined.
6. In this Schedule –
  - “common costs” means the costs incurred by the infrastructure manager in operating his railway infrastructure which are not attributable to the operation of trains on that infrastructure by any particular railway undertaking or international grouping;
  - “costs” include the cost of operating the control and safety systems, or providing or renewing capital assets, of a rate of return on capital invested in the infrastructure, of the payment of value added tax and administrative costs and other overheads; and
  - “infrastructure” means railway infrastructure.

## SCHEDULE 2

Regulation 14

### QUALIFICATIONS FOR INTERNATIONAL LICENCE

#### **Good Repute**

1. In determining whether a railway undertaking is of good repute the Department shall have regard to all relevant evidence, including any information in its possession as to the previous conduct of any appropriate officer of the undertaking if that conduct appears to him to relate to the undertaking’s fitness to hold an international licence.
2. Without prejudice to the generality of its powers under paragraph 1, the Department shall not determine that a railway undertaking is of good repute if –
  - (a) an order has been made by the court for the winding up of the undertaking under insolvency legislation or any director for the time being of the undertaking has been adjudged bankrupt under that legislation or the undertaking or any such director has made a compromise with its or his creditors;

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- (b) the undertaking or any appropriate officer of the undertaking has been convicted of a serious offence, including in particular an offence contrary to the law relating to commercial transactions, the law relating to transport, or social and labour law (including legislation relating to occupational health and safety); or
- (c) the undertaking or any appropriate officer of the undertaking has been convicted repeatedly of offences contrary to social or labour law not falling within sub-paragraph (b).

3.—(1) For the purpose of paragraph 2 a person has been convicted of a serious offence if that offence was committed under the law of any part of the United Kingdom or under the law of a country or territory outside the United Kingdom and if on conviction there was imposed on him for that offence a punishment falling within sub-paragraph (2).

(2) The punishments are –

- (a) a sentence of imprisonment for a term exceeding three months;
- (b) a fine exceeding level 4 on the standard scale;
- (c) a community service order requiring him to perform work for more than 60 hours; and
- (d) in the case of an offence committed under the law of a country or territory outside the United Kingdom, any punishment corresponding to those mentioned in paragraphs (a) to (c).

(3) In sub-paragraph (2) –

- (a) the reference to a sentence of imprisonment includes a reference to any form of custodial sentence or order, other than one imposed under the enactments relating to mental health; and
- (b) “community service order” means an order under Article 13 of the Criminal Justice (Northern Ireland) Order 1996(1).

4.—(1) Any reference in paragraph 3 to an offence under the law of any part of the United Kingdom includes a reference to a civil offence (wherever committed) within the meaning of the Army Act 1955(2), the Air Force Act 1955(3) or as the case may be the Naval Discipline Act 1957(4).

(2) For the purposes of paragraphs 1 to 4 –

- (a) convictions which are spent for the purposes of the Rehabilitation of Offenders (Northern Ireland) Order 1978(5) shall be disregarded; and
- (b) the Department may also disregard an offence if such time as it thinks proper has elapsed since the date of the conviction.

5. In paragraphs 1 and 2 the reference to any appropriate officer of the undertaking is to any director, manager, secretary, or other similar officer of the undertaking or any person purporting to act in any such capacity.

### **Financial Fitness**

6. Subject to paragraph 8 an applicant for an international licence shall be considered to meet the required standard of financial fitness when it can demonstrate that it will be able to meet its actual and potential obligations, established under realistic assumptions, for a period of twelve months from the date of application for a licence.

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(1) S.I.1996/3160 (N.I. 24)  
(2) 1955 c. 18  
(3) 1955 c. 19  
(4) 1957 c. 53  
(5) S.I. 1978/1908 (N.I. 27)

7. For the purpose of demonstrating its financial fitness a railway undertaking shall make available to the Department the undertaking's annual accounts, or if the undertaking is not able to provide annual accounts then the undertaking's balance sheet, together with details of the following matters (insofar as these cannot be ascertained from the annual accounts or, as the case may be, the balance sheet) –

- (a) the railway undertaking's available funds, including the bank balance, pledged overdraft provisions and loans;
- (b) the railway undertaking's funds and assets available as security;
- (c) the railway undertaking's working capital;
- (d) relevant costs, including the railway undertaking's purchase costs of payments to account for vehicles, land, buildings, installations and rolling stock; and
- (e) charges on the railway undertaking's assets; and
- (f) such other information concerning the financial fitness of the railway undertaking as the Department may reasonably request.

8. The Department shall not find the railway undertaking to be financially fit if the railway undertaking has substantial arrears of taxes or social security payments which are owed as a result of the undertaking's activity.

9. Without prejudice to paragraph 7(f), the Department may request that the railway undertaking provide audit reports or other suitable documents as the Department considers necessary in relation to the matters listed in paragraph 7(a) – (e) which have been prepared by a body other than the railway undertaking such as a bank, building society, accountant or auditor.

### **Professional Competence**

10. For the purposes of these Regulations the requirements of professional competence are satisfied by a railway undertaking when: –

- (a) the undertaking has or will have a management organisation which possesses the knowledge and experience necessary to exercise safe and reliable operational control and supervision of the type of operations specified in the licence;
- (b) its personnel responsible for safety, in particular the drivers of the rolling stock, are fully qualified for their field of activity; and
- (c) its personnel, rolling stock and organisation can ensure a high level of safety for the services to be provided.

11. A railway undertaking shall provide to the Department such information as he may reasonably be required to enable the Department to determine, after consultation with the Health and Safety Executive for Northern Ireland, whether the requirements in paragraph 10 have been satisfied.

12. The information referred to in paragraph 11 shall in all cases include –

- (a) particulars of the nature and maintenance of rolling stock, in particular as regards safety standards; and
- (b) particulars of the qualifications of personnel responsible for safety and details of personal training including appropriate written proof of compliance with qualification requirements.

### **Insurance Cover**

13.—(1) An applicant for an international licence shall be considered to meet the requirement of insurance cover where in accordance with the law of the United Kingdom and any relevant

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international law the undertaking maintains adequate insurance cover, or has made arrangements having equivalent effect, covering its liabilities in the event of accident to passengers, luggage, freight, mail and third parties.

(2) In sub-paragraph (1) “international law” means any provisions contained in any international agreement or arrangement to which the United Kingdom is a party and which have the force of law in the United Kingdom.