

## SCHEDULE 4

Regulations 44(9) and (17)

### QUALIFICATIONS FOR EUROPEAN 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 it to relate to the undertaking's fitness to hold a European 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 or sequestration of its estate under insolvency legislation or any appropriate officer of the undertaking for the time being has been adjudged bankrupt or his estate has been sequestrated under that legislation;
- (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, or the law relating to transport; or
- (c) the undertaking or any appropriate officer of the undertaking has been convicted of a serious offence which is contrary to either of the following laws or has been convicted repeatedly of offences which are contrary to either of those laws—
  - (i) social or labour law (including legislation relating to occupational health and safety); or
  - (ii) in the case of an undertaking seeking to operate cross-border goods transport subject to customs procedures, customs law.

3.—(1) For the purposes 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 sentence of imprisonment for a term exceeding three months.

(2) In subparagraph (1), 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.

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(1), the Air Force Act 1955(2) or as the case may be the Naval Discipline Act 1957(3).

(2) For the purposes of paragraphs 1 to 3—

- (a) convictions which are spent for the purposes of the Rehabilitation of Offenders (Northern Ireland) Order 1978(4) 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.

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(1) 1955 c.18

(2) 1955 c.19

(3) 1957 c.53

(4) S.I. 1978/1908 (N.I. 27)

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

### **Financial fitness**

6. Subject to paragraph 8 an applicant for a European 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.

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 (in so far 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;
- (e) charges on the railway undertaking's assets; and
- (f) taxes and social security payments.

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

9. Without prejudice to paragraph 7 the Department may request that the railway undertaking provide to it audit reports or other suitable documents as the Department considers necessary in relation to the matters listed in paragraph 7(a) to (f) 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 the undertaking has or will have a management organisation which possesses the knowledge or experience (or both) necessary to exercise safe and reliable operational control and supervision of the type of operations specified in the licence.

### **Insurance cover**

11.—(1) An applicant for a European licence shall be considered to meet the requirement of insurance cover where in accordance with the law of the United Kingdom or any part of the United Kingdom and any relevant 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 determining whether adequate insurance cover is maintained, the Department may take into account the specificities and risk-profile of different types of services, in particular of railway operations for cultural or heritage purposes.

(3) In sub-paragraph (1) “relevant 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.

(4) Insurance cover shall be considered to be “adequate” for the purposes of paragraph (1) if it has been approved by the Department.