

## SCHEDULE 2

Regulation 6(14)

### QUALIFICATIONS FOR [F1RAILWAY UNDERTAKING] LICENCE

#### Textual Amendments

- F1** Words in Sch. 2 heading substituted (31.12.2020) by The Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/700), regs. 1(2), **18(a)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)

#### Good repute

1. In determining whether a railway undertaking is of good repute, the ORR 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 [F2railway undertaking] licence.

#### Textual Amendments

- F2** Words in Sch. 2 para. 1 substituted (31.12.2020) by The Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/700), regs. 1(2), **18(b)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)

2. Without prejudice to the generality of its powers under paragraph 1, the ORR 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 the sequestration of its estate under insolvency legislation or any appropriate officer of the undertaking for the time being has been [F3made] bankrupt or his estate has been sequestrated under that legislation;
- [F4(aa)] any appropriate officer of the undertaking has a debt relief order made in respect of him (under Part 7A of the Insolvency Act 1986);]
- (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.

#### Textual Amendments

- F3** Word in Sch. 2 para. 2(a) substituted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 2 para. 13**
- F4** Sch. 2 para. 2(aa) inserted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 3 para. 46** (with art. 7)

**Changes to legislation:** There are currently no known outstanding effects for the *The Railway (Licensing of Railway Undertakings) Regulations 2005, SCHEDULE 2.* (See end of Document for details)

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 sub-paragraph (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 [<sup>F5</sup>an offence (wherever committed) under section 42 of the Armed Forces Act 2006].

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

- (a) convictions which are spent for the purposes of the Rehabilitation of Offenders Act 1974 <sup>M1</sup> shall be disregarded; and
- (b) the ORR may also disregard an offence if such time as it thinks proper has elapsed since the date of the conviction.

#### Textual Amendments

**F5** Words in Sch. 2 para. 4(1) substituted (31.10.2009) by [The Armed Forces Act 2006 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2054\)](#), art. 1(2), **Sch. 1 para. 27** (with Sch. 2 para. 18)

#### Marginal Citations

**M1** 1974 c. 53.

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 other person purporting to act in any such capacity.

#### Financial fitness

6. Subject to paragraph 8 an applicant for a [<sup>F6</sup>railway undertaking] 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.

#### Textual Amendments

**F6** Words in Sch. 2 para. 6 substituted (31.12.2020) by [The Railway \(Licensing of Railway Undertakings\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/700\)](#), regs. 1(2), **18(b)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)

7. For the purpose of demonstrating its financial fitness a railway undertaking shall make available to the ORR 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;

**Changes to legislation:** There are currently no known outstanding effects for the The Railway (Licensing of Railway Undertakings) Regulations 2005, SCHEDULE 2. (See end of Document for details)

- (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; <sup>F7</sup>...
- (e) charges on the railway undertaking's assets <sup>F8</sup>; and
- (f) taxes and social security payments.]

#### Textual Amendments

- F7** Word in Sch. 2 para. 7(d) omitted (29.7.2016) by virtue of [The Railways \(Access, Management and Licensing of Railway Undertakings\) Regulations 2016 \(S.I. 2016/645\)](#), regs. 1(1), **39(11)(a)** (with reg. 4)
- F8** Sch. 2 para. 7(f) and word inserted (29.7.2016) by [The Railways \(Access, Management and Licensing of Railway Undertakings\) Regulations 2016 \(S.I. 2016/645\)](#), regs. 1(1), **39(11)(b)** (with reg. 4)

**8.** The ORR shall not find the railway undertaking to be financially fit if the railway undertaking has <sup>F9</sup>considerable or recurrent] arrears of taxes or social security payments which are owed as a result of the undertaking's activity.

#### Textual Amendments

- F9** Words in Sch. 2 para. 8 substituted (29.7.2016) by [The Railways \(Access, Management and Licensing of Railway Undertakings\) Regulations 2016 \(S.I. 2016/645\)](#), regs. 1(1), **39(11)(c)** (with reg. 4)

**9.** Without prejudice to regulation 6(6), the ORR may request that the railway undertaking provide to it audit reports or other suitable documents as the ORR considers necessary in relation to the matters listed in paragraph 7(a) to (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 requirement 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 <sup>F10</sup>railway undertaking] licence shall be considered to meet the requirement of insurance cover where, in accordance with the law of the United Kingdom or of 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.

<sup>F11</sup>(1A) In determining whether adequate insurance cover is maintained, the ORR may take into account the specificities and risk-profile of different types of services, in particular of railway operations for cultural or heritage purposes.]

(2) 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.

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

**Changes to legislation:** There are currently no known outstanding effects for the *The Railway (Licensing of Railway Undertakings) Regulations 2005, SCHEDULE 2. (See end of Document for details)*

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**Textual Amendments**

- F10** Words in Sch. 2 para. 11(1) substituted (31.12.2020) by [The Railway \(Licensing of Railway Undertakings\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/700\)](#), regs. 1(2), **18(b)** (with regs. 32-39); 2020 c. 1, Sch. 5 para. 1(1)
- F11** Sch. 2 para. 11(1A) inserted (29.7.2016) by [The Railways \(Access, Management and Licensing of Railway Undertakings\) Regulations 2016 \(S.I. 2016/645\)](#), regs. 1(1), **39(11)(d)** (with reg. 4)

**Changes to legislation:**

There are currently no known outstanding effects for the The Railway (Licensing of Railway Undertakings) Regulations 2005, SCHEDULE 2.