

## SCHEDULE 1

Regulation 5

### SERVICES TO BE SUPPLIED TO RAILWAY UNDERTAKINGS

1. The minimum access package referred to in regulation 5(1) must comprise—
  - (a) handling of requests for infrastructure capacity; and
  - (b) the right to utilise such capacity as is granted and, in particular—
    - (i) such railway infrastructure including track, points and junctions as are necessary to utilise that capacity;
    - (ii) the use of electrical supply equipment for traction current;
    - (iii) train control, including signalling, train regulation, dispatching and the communication and provision of information on train movements; and
    - (iv) all other information as is necessary to implement or to operate the service for which capacity has been granted.
2. Access including track access to services facilities and the supply of services, referred to in regulations 4, 5 and 10 must comprise where they exist—
  - (a) refuelling facilities, and supply of fuel in these facilities, charges for which must be shown on the invoices separately;
  - (b) passenger stations, including buildings and other facilities such as travel information display and a suitable location for ticketing services;
  - (c) freight terminals
  - (d) marshalling yards;
  - (e) train formation facilities including shunting facilities;
  - (f) storage sidings;
  - (g) maintenance facilities with the exception of heavy maintenance facilities dedicated to rolling stock requiring specific facilities;
  - (h) other technical facilities, including cleaning and washing facilities; and
  - (i) relief facilities.
3. The additional services referred to in regulation 5(10) may comprise—
  - (a) traction current, charges for which must be shown on the invoices separately from the charges for using the electrical equipment, without prejudice to the application of [Directive 2009/72/EC](#) of the European Parliament and of the Council of 13<sup>th</sup> July 2009 concerning common rules for the internal market in electricity and repealing [Directive 2003/54/EC](#);
  - (b) pre-heating of passenger trains;
  - (c) tailor-made contracts for:
    - (i) control of the transport of dangerous goods; and
    - (ii) assistance in running abnormal trains.
4. The ancillary services referred to in regulation 5(11) may comprise—
  - (a) access to the telecommunications network;
  - (b) the provision of supplementary information;
  - (c) technical inspection of rolling stock;
  - (d) ticketing services in passenger stations; and

- (e) heavy maintenance services supplied in maintenance facilities dedicated to rolling stock requiring specific facilities.

## SCHEDULE 2

Regulations 13, 14, 16 and 17

### ACCESS CHARGING

#### **Principles of access charging**

- 1.—(1) The infrastructure manager must ensure that the application of the charging scheme—
  - (a) complies with the rules set out in the Network Statement produced in accordance with regulation 13; and
  - (b) results in equivalent and non-discriminatory charges for different railway undertakings that perform services of an equivalent nature in a similar part of the market.
- (2) The calculation of the charge may in particular take into account the mileage, composition of the train and any specific requirements in terms of such factors as speed, axle load and the degree or period of utilisation of the infrastructure.
- (3) Except where specific arrangements are made in accordance with paragraph 3, the infrastructure manager must ensure that the charging scheme in use is based on the same principles over the whole of the network.
- (4) Without prejudice to sub-paragraph (8) the charges for the minimum access package and track access to service facilities referred to in paragraphs 1 and 2 of Schedule 1 shall be set at the cost that is directly incurred as a result of operating the train service.
- (5) From 2 August 2019 or earlier, the infrastructure manager must calculate the cost under sub-paragraph (4) in accordance with the Commission Implementing Regulation (EU) 2015/909 of 12<sup>th</sup> June 2015 on the modalities for the calculation of the cost that is directly incurred as a result of operating the train service<sup>(1)</sup>.
- (6) The charge imposed for track access within service facilities referred to in paragraph (2) of Schedule 1 and the supply of service in such service facilities must not exceed the cost of providing it, plus a reasonable profit.
- (7) If the additional or ancillary services referred to in paragraphs 3 and 4 of Schedule 1 are offered by only one supplier the charge imposed for the supply of those services must not exceed the cost of providing the service plus a reasonable profit.
- (8) The infrastructure charge may include a charge to reflect the scarcity of capacity of the identifiable segment of the infrastructure during periods of congestion.
- (9) The charges referred to in subparagraph (4) and (8) may be averaged over a reasonable spread of train services and times, but the relevant magnitudes of the infrastructure charges must be related to the costs attributable to the services.

#### **Exceptions to the charging principles**

- 2.—(1) In order to obtain full recovery of the costs incurred the infrastructure manager, with the approval of the Department, may levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, whilst guaranteeing optimum competitiveness, in particular in respect of rail market segments.

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(1) O.J. No. L148, 13.6.15, p.17

(2) The effect of sub-paragraph (1) must not be to exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear.

(3) The charging system must respect the productivity increases achieved by applicants.

(4) Before approving the levy of a mark-up under sub-paragraph (1) the Department must ensure that the infrastructure manager evaluates the relevance of a mark-up for the specific market segments, considering at least the pairs listed in sub-paragraph (9) and retaining the relevant ones.

(5) The list of market segments to be considered by the infrastructure manager under sub-paragraph (3) must contain at least the three following segments: freight services, passenger services within the framework of a public service contract and other passenger services.

(6) In addition to the market segments considered under paragraph (4) the infrastructure manager may consider further market segments according to commodity or passengers transported.

(7) Market segments in which railway undertakings are not currently operating but in which they may provide services during the period of validity of the charging system, must also be defined. The infrastructure manager must not include a mark up in the charging system for those market segments.

(8) The list of market segments must be published in the network statement and reviewed at least every five years; the Office of Rail and Road must control that list in accordance with paragraph (2) of regulation 31.

(9) The pairs referred to in subparagraph (3) are—

- (a) passenger versus freight services,
- (b) trains carrying dangerous goods versus other freight trains,
- (c) domestic versus international services,
- (d) combined transport versus direct trains,
- (e) urban or regional versus interurban passenger services,
- (f) block trains versus single wagon load trains,
- (g) regular versus occasional train services.

3.—(1) Subject to subparagraph (2), for specific investment projects completed—

- (a) after 15th March 1988; or
- (b) following the coming into operation of these regulations,

the infrastructure manager may set or continue to set higher charges on the basis of the long-term costs of the project.

(2) For subparagraph (1) to apply—

- (a) the project must increase the efficiency or cost-effectiveness; and
- (b) the project must be one that could not otherwise have been undertaken without the prospect of such higher charges.

(3) A charging arrangement to which subparagraph (1) applies may incorporate agreements on the sharing of the risk associated with new investments.

4.—(1) An infrastructure manager's average and marginal charges for equivalent uses of the infrastructure must be comparable and comparable services in the same market segment must be subject to the same charges.

(2) The network statement produced by the infrastructure manager in accordance with regulation 13 must demonstrate that the charging system meets the requirements in subparagraph (1) in so far as this can be done without the disclosure of commercially confidential information.

5. If an infrastructure manager intends to modify the essential elements of the charging system referred to in paragraph 2 that infrastructure manager must make such modifications public at least three months in advance of the deadline for the publication of the network statement in accordance with regulation 13(9).

### **Discounts**

6.—(1) Subject to the provisions of articles 101, 102, 106 and 107 of the Treaty, and notwithstanding paragraph 1(5) of this schedule, any discount on the charges levied on a user of railway infrastructure by the infrastructure manager, for any service, must comply with the principles set out in this paragraph.

(2) Except where subparagraph (3) applies, discounts must be limited to the actual saving of the administrative cost to the infrastructure manager and, in determining the level of discount to be applied, no account may be taken of cost savings already incorporated in the charge levied.

(3) The infrastructure manager may introduce schemes available to all users of the infrastructure, with reference to specified traffic flows, granting time limited discounts to encourage the development of new rail services, or discounts encouraging the use of considerably underutilised lines.

(4) Discounts may relate only to charges levied for a specified infrastructure section.

(5) Similar discount schemes must be applied to similar services.

(6) Discount schemes must be applied in a non-discriminatory manner to any railway undertaking.

### **Performance Schemes**

7.—(1) The basic principles referred to in regulation 16(3) are as follows:

(2) In order to achieve an agreed level of performance and not to endanger the economic viability of a service, the infrastructure manager must agree with applicants the main parameters of the performance scheme, in particular the value of delays, the thresholds for payments due under the performance scheme relative both to individual train runs and to all train runs of a railway undertaking in a given period of time.

(3) The infrastructure manager must communicate to the railway undertakings the working timetable, on the basis of which delays will be calculated, at least five days before the train run. The infrastructure manager may apply a shorter notice period in case of force majeure or late alterations of the working timetable.

(4) All delays must be attributable to one of the following delay classes and sub-classes—

(a) operation/planning management attributable to the infrastructure manager—

- (i) timetable compilation,
- (ii) formation of train,
- (iii) mistakes in operations procedure,
- (iv) wrong application of priority rules,
- (v) staff,
- (vi) other causes;

(b) infrastructure installations attributable to the infrastructure manager—

- (i) signalling installations,
- (ii) signalling installations at level crossings,
- (iii) telecommunications installations,

- (iv) power supply equipment,
  - (v) track,
  - (vi) structures,
  - (vii) staff,
  - (viii) other causes;
- (c) civil engineering causes attributable to the infrastructure manager—
- (i) planned construction work,
  - (ii) irregularities in execution of construction work,
  - (iii) speed restriction due to defective track,
  - (iv) other causes;
- (d) causes attributable to other infrastructure managers—
- (i) caused by previous infrastructure manager,
  - (ii) caused by next infrastructure manager,
- (e) commercial causes attributable to the railway undertaking,
- (i) exceeding the stop time,
  - (ii) request of the railway undertaking,
  - (iii) loading operations,
  - (iv) loading irregularities,
  - (v) commercial preparation of train,
  - (vi) staff,
  - (vii) other causes;
- (f) rolling stock attributable to the railway undertaking—
- (i) roster planning/re-rostering,
  - (ii) formation of train by railway undertaking,
  - (iii) problems affecting coaches (passenger transport),
  - (iv) problems affecting wagons (freight transport),
  - (v) problems affecting cars, locomotives and rail cars,
  - (vi) staff,
  - (vii) other causes;
- (g) causes attributable to other railway undertakings—
- (i) caused by next railway undertaking,
  - (ii) caused by previous railway undertaking;
- (h) external causes attributable to neither infrastructure manager nor railway undertaking—
- (i) strike,
  - (ii) administrative formalities,
  - (iii) outside influence,
  - (iv) effects of weather and natural causes,
  - (v) delay due to external reasons on the next network,
  - (vi) other causes; and

- (i) secondary causes attributable to neither infrastructure manager nor railway undertaking—
  - (i) dangerous incidents, accidents and hazards,
  - (ii) track occupation caused by the lateness of the same train,
  - (iii) track occupation caused by the lateness of another train,
  - (iv) turn-around,
  - (v) connection,
  - (vi) further investigation needed.
- (5) Wherever possible, delays must be attributed to a single organisation, considering both the responsibility for causing the disruption and the ability to re-establish normal traffic conditions.
- (6) The calculation of payments must take into account the average delay of train services of similar punctuality requirements.

### SCHEDULE 3

Regulations 19 and 22

#### TIMETABLE FOR THE ALLOCATION PROCESS

##### **Date of timetable change**

- 1.—(1) Subject to subparagraph (2), (3) and (4) the working timetable must be established once per calendar year and the change of working timetable must take place at midnight on the second Saturday in December.
- (2) Where a change or adjustment to the working timetable is carried out after the winter, in particular to take account, where appropriate, of changes in regional passenger traffic timetables, it must take place at midnight on the second Saturday in June.
- (3) Further changes to the working timetable may be made at such other intervals as are required.
- (4) The infrastructure manager may agree different dates to those stipulated in subparagraphs (1) and (2) and, in this case, must inform the European Commission if international traffic may be affected.

##### **Timetable for the production of the working timetable**

- 2.—(1) The final date for receipt of requests for capacity to be incorporated into the working timetable must be no more than 12 months in advance of the entry into force of the working timetable.
- (2) No later than eleven months before the working timetable comes into force, the infrastructure managers must ensure that provisional international train paths have been established in co-operation with other relevant infrastructure managers or, as the case may be, allocation bodies, in accordance with regulation 20.
- (3) Infrastructure managers must ensure that, so far as possible, provisional international train paths established in accordance with subparagraph (2) are adhered to during the subsequent allocation process.
- (4) No later than four months after the deadline for submission for bids by applicants, the infrastructure manager must prepare a draft working timetable.

## 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<sup>(2)</sup>, the Air Force Act 1955<sup>(3)</sup> or as the case may be the Naval Discipline Act 1957<sup>(4)</sup>.

(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<sup>(5)</sup> 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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(2) 1955 c.18

(3) 1955 c.19

(4) 1957 c.53

(5) 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.

## SCHEDULE 5

Regulation 35(2)

### ACCOUNTING INFORMATION TO BE SUPPLIED TO THE OFFICE OF RAIL AND ROAD UPON REQUEST

1. The accounting information referred to in regulation 35(2) is as follows:

#### **Account separation**

2. Separate profit and loss accounts and balance sheets for freight, passenger and infrastructure management activities;

- (a) detailed information on individual sources and uses of public funds and other forms of compensation in a transparent and detailed manner, including a detailed review of the businesses’ cash flows in order to determine in what way these public funds and other forms of compensation have been used;
- (b) cost and profit categories making it possible to determine whether cross-subsidies between these different activities occurred, according to the requirements of the Office of Rail and Road;
- (c) methodology used to allocate costs between different activities; and
- (d) where the regulated firm is part of a group structure, full details of inter-company payments.

#### **Monitoring of track access charges**

3. Different cost categories, in particular providing sufficient information on marginal/direct costs of the different services or groups of services so that infrastructure charges can be monitored;

- (a) sufficient information to allow monitoring of the individual charges paid for services (or groups of services); if required by the Office of Rail and Road, this information must contain data on volumes of individual services, prices for individual services and total revenues for individual services paid by internal or external customers; and
- (b) costs and revenues for individual services (or groups of services) using the relevant cost methodology, as required by the regulatory body, to identify potentially anti-competitive pricing (cross-subsidies, predatory pricing and excessive pricing).

#### **Indication of financial performance**

4. (a) a statement of financial performance;
- (b) a summary expenditure statement;
- (c) a maintenance expenditure statement;
- (d) an operating expenditure statement;
- (e) an income statement; and
- (f) supporting notes that amplify and explain the statements, where appropriate.

**Status:** *This is the original version (as it was originally made).*