



# SENIOR TRAFFIC COMMISSIONER

## Statutory Document No. 3

### TRANSPORT MANAGERS

This document is issued pursuant to section 4C of the Public Passenger Vehicles Act 1981 (as amended). Representative organisations have been consulted in accordance with that provision.	
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Senior Traffic Commissioner

## GUIDANCE

1. The Senior Traffic Commissioner for Great Britain issues the following Guidance under section 4C(1) of the Public Passenger Vehicles Act 1981 (as amended) to provide information as to the way in which the Senior Traffic Commissioner believes that traffic commissioners should interpret the law in relation to the requirements for and on transport managers.
2. A transport manager must be of good repute.<sup>1</sup> The Certificate of Professional Competence (CPC) must be appropriate for the type of licence being applied for. Regulation 5 of the Road Transport Operator Regulations 2011 states that a standard licence granted under the 1981 Act constitutes an authorisation to engage in the occupation of road transport operator for the purposes of Regulation (EC) 1071/2009 in the capacity of road passenger transport operator.
3. Only those persons who can fulfil the statutory requirements for having continuous and effective responsibility for the management of the transport operations of the business in so far as they relate to the carriage of goods (as defined below) can act as a transport manager. The transport manager retains legal responsibility regardless of whether his or her activities are delegated.

### **Goods Vehicles Legislation: The Goods Vehicles (Licensing of Operators) Act 1995**

4. Standard licence holders and applicants for standard licences are required to meet the requirements of professional competence. Section 13(1) requires the applicant to satisfy the traffic commissioner that the requirements of section 13A and C are met. Section 13A contains a requirement that an applicant for a standard licence is professionally competent (in accordance with paragraphs 8 to 13 of Schedule 3).
5. A designated transport manager must meet the requirements of Article 4 as follows:
  - be of good repute (in accordance with paragraphs 1 to 5 of Schedule 3);
  - be professionally competent (in accordance with paragraph 13 of Schedule 3); and,
  - in the case of an external transport manager, is not prohibited from acting as a transport manager by a traffic commissioner, and is not designated to act in that capacity for more than 4 operators or be responsible for more than 50 vehicles or such smaller number as the traffic commissioner considers appropriate.
6. Section 22(2)(a) and (b) make it a condition of the licence for an operator to inform the traffic commissioner of any change within 28 days that would affect the fulfilment to be professionally competent and/or of any event which affects the requirements under section 13A (see section 5). The traffic commissioner then has discretion to consider a period of grace *up to* 6 months to find a

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<sup>1</sup> See Statutory Guidance and Statutory Directions on Good Repute and Fitness and Statutory Guidance and Statutory Directions on the Principles of Decision Making.

replacement (and a further 3 months in the case of death or incapacity of the transport manager).

7. The statutory definition of “transport manager” in section 58 (now amended by Regulation (EC) 1071/2009) means ‘a natural person employed by an undertaking or, if that undertaking is a natural person, that person or, where provided for, another natural person designated by that undertaking by means of a contract, who effectively and continuously manages the transport activities of that undertaking’. Article 4.1 of Regulation (EC) 1071/2009 refers to that person having a genuine link to the undertaking, such as being an employee, director, owner or shareholder or administering it.
8. Under paragraph 15 of Schedule 3 a traffic commissioner cannot make an adverse finding against an existing transport manager’s repute unless a notice has been properly served<sup>2</sup> on that transport manager:
  - stating whether repute and/or professional competence is at issue;
  - setting out the nature of the allegations;
  - giving the transport manager 28 days from the date of service to make representations; and
  - stating that the transport manager is entitled to request an inquiry as provided in section 35.

A traffic commissioner must consider any representations received under section 35 and hold a hearing if requested.

9. Under paragraph 16(1) of Schedule 3 (as amended by Article 6.2 of Regulation (EC) 1071/2009), where a traffic commissioner finds that a transport manager has been convicted of a serious criminal offence or incurred a penalty for one or more serious infringements that would lead to a loss of good repute, the traffic commissioner must consider whether a finding that the person was no longer of good repute would constitute a disproportionate response and that consequently good repute is unaffected. Any such finding must be duly reasoned and justified and the reasons shall be recorded in the national register. If the traffic commissioner does not find that the loss of good repute would be disproportionate the conviction or penalty shall lead to a loss of good repute.
10. Article 14.1 of Regulation (EC) 1071/2009 provides that where a transport manager loses good repute in accordance with Article 6 (as set out above) that the traffic commissioner shall declare that transport manager unfit to manage the transport activities of an undertaking. Article 14.2 provides that unless and until a rehabilitation measure is taken in accordance with the relevant provisions of national law the CPC shall no longer be valid in any Member State.
11. Under paragraph 16(2) of Schedule 3 (as amended by the Road Transport Operator Regulations 2011), where a traffic commissioner determines that a transport manager has lost their good repute, the traffic commissioner must order

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<sup>2</sup> deemed served on the date on which it would have been delivered in the ordinary course of post to the transport manager’s last known address, notwithstanding that it was returned as undelivered or was for any other reason not received by the transport manager.

the person to be disqualified from acting as a transport manager. Whilst the disqualification is in force the person may not act as a transport manager for any road transport undertaking and their CPC is not valid. The disqualification order can either be indefinite or for such period as the commissioner thinks fit.

12. However under paragraph 17 of Schedule 3 (as amended by the Road Transport Operator Regulations 2011) where a transport manager is disqualified the traffic commissioner who made the order may, at any time, cancel the order or, with the consent of the disqualified person, vary the order, either upon application by the disqualified person or of the traffic commissioner's own volition and only after serving notice stating:

- the intention to vary the measures specified;
- that the person is entitled to make representations within 28 days from the date of notice; and
- that the person is entitled to request a hearing.

The traffic commissioner may specify measures with which the disqualified person must comply before the order can be cancelled or varied.

### **Passenger Carrying Vehicles Legislation: The Public Passenger Vehicles Act 1981**

13. Standard licence holders and applicants for standard licences are required to meet the requirements of professional competence. Section 14 requires the traffic commissioner to be satisfied that an applicant for a standard licence meets the requirements of sections 14ZA and 14ZC. 14ZA(1) requires an applicant to be professionally competent (as determined in accordance with paragraphs 3, 4 and 6 of Schedule 3).

14. A designated transport manager must meet the requirements of Article 4 as follows:

- be of good repute (in accordance with paragraph 1 of Schedule 3);
- be professionally competent (in accordance with paragraph 6 of Schedule 3); and,
- in the case of an external transport manager, is not prohibited from acting as a transport manager by a traffic commissioner, and is not designated to act in that capacity for more than 4 operators or be responsible for more than 50 vehicles or such smaller number as the traffic commissioner considers appropriate.

15. Section 17(3)(b) makes it a condition of the licence for an operator to inform the traffic commissioner of any change within 28 days. The traffic commissioner then has discretion to consider a period of grace *up to* 6 months (and a further 3 months in the case of death or incapacity) to find a replacement.

16. The statutory definition of "transport manager" in section 82 (as amended by Regulation (EC) 1071/2009) means 'a natural person employed by an undertaking or, if that undertaking is a natural person, that person or, where provided for, another natural person designated by that undertaking by means of

a contract, who effectively and continuously manages the transport activities of that undertaking'. Article 4.1 of Regulation (EC) 1071/2009 refers to that person having a genuine link to the undertaking, such as being an employee, director, owner or shareholder or administering it. It also refers to Regulation (EC) 1073/2009 of the European Parliament and of the Council of 21 October 2009, amending Regulation (EC) No 561/2006, on common rules for access to the international market for coach and bus services.

- 17.** Under paragraph 7A of Schedule 3 of the Act a traffic commissioner cannot make an adverse finding against a transport manager's repute unless a notice has been properly served<sup>3</sup> on that transport manager:
- stating whether repute and/or professional competence is at issue;
  - setting out the nature of the allegations;
  - giving the transport manager 28 days from the date of service to make representations; and
  - stating that the transport manager is entitled to request an inquiry as provided in section 54.

A traffic commissioner must consider any representations received under section 54 and hold a hearing if requested.

- 18.** Under paragraph 7B(1) of Schedule 3 (as amended by Article 6.2 of Regulation (EC) 1071/2009), where a traffic commissioner finds that a transport manager has been convicted of a serious criminal offence or incurred a penalty for one or more serious infringements that would lead to a loss of good repute, the traffic commissioner must consider whether a finding that the person was no longer of good repute would constitute a disproportionate response and that consequently good repute is unaffected. Any such finding must be duly reasoned and justified and the reasons shall be recorded in the national register. If the traffic commissioner does not find that the loss of good repute would be disproportionate the conviction or penalty shall lead to a loss of good repute.
- 19.** Article 14.1 of Regulation (EC) 1071/2009 provides that where a transport manager loses good repute in accordance with Article 6 as set out above that the traffic commissioner shall declare that transport manager unfit to manage the transport activities of an undertaking. Article 14.2 provides that unless and until a rehabilitation measure is taken in accordance with the relevant provisions of national law the CPC shall no longer be valid in any Member State.
- 20.** Under paragraph 17B(2) of Schedule 3 (as amended by the Road Transport Operator Regulations 2011), where a traffic commissioner determines that a transport manager has lost their good repute, the traffic commissioner must order the person to be disqualified from acting as a transport manager. Whilst the disqualification is in force the person may not act as a transport manager for any road transport undertaking and their CPC is not valid. The disqualification order can either be indefinite or for such period as the commissioner thinks fit.

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<sup>3</sup> deemed served on the date on which it would have been delivered in the ordinary course of post to the transport manager's last known address, notwithstanding that it was returned as undelivered or was for any other reason not received by the transport manager.

**21.** However under paragraph 7C of Schedule 3 (as amended by the Road Transport Operator Regulations 2011), where a transport manager is disqualified the traffic commissioner who made the order may, at any time, cancel the order or, with the consent of the disqualified person, vary the order, either upon application by the disqualified person or of the traffic commissioner's own volition and only after serving notice stating:

- the intention to vary the measures specified;
- that the person is entitled to make representations within 28 days from the date of notice; and
- that the person is entitled to request a hearing.

The traffic commissioner may specify measures with which the disqualified person must comply before the order can be cancelled or varied.

## Case Law

**22.** This Guidance may be subject to decisions of the higher courts and to subsequent legislation. The Senior Traffic Commissioner has extracted the following principles and examples from existing case law.

**23.** Transport managers should be able to supply a suitable certificate of qualification.<sup>4</sup> This can be by way of examination or entitlement (formerly "Grandfather Rights" now "Acquired Rights"). It is incumbent upon the operator to ensure that any appointed transport manager has the continuing ability and determination to give full and practical application to the statutory duties.<sup>5</sup>

**24.** Continuous and effective responsibility means just that. An applicant or operator can be taken to be aware of the various guidance documents issued on behalf of the Senior Traffic Commissioner.<sup>6</sup> When nominating an individual as a transport manager it will be necessary to show that the person concerned will be able to exercise that level of responsibility. The traffic commissioner must be in a position to assess how much time that individual will devote to the business in question, what other demands that person will have on their time and what contractual relationship exists between the individual and the applicant/operator<sup>7</sup>. A transport manager should be able to show that, however infrequently vehicles return to the operating centre, he or she is able to and does exercise continuous and effective management of the vehicles on a day to day basis. The requirements of the legislation are unlikely to be satisfied by a transport manager who lives abroad.<sup>8</sup>

**25.** A transport manager must always be more than just a transport manager in name.<sup>9</sup> A transport manager risks their reputation<sup>10</sup> if they find themselves in this

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<sup>4</sup> 2004/021 Carway Haulage. All new CPC qualifications will equip the holder to exercise effective management of international operations. If a standard licence operator is contemplating international work then the operator must ensure that the nominated CPC holder either holds a new style CPC or an old style international qualification.

<sup>5</sup> 2000/018 Euroline Transport and 2008/315 L C Mistry

<sup>6</sup> 2012/346 MGM Haulage & Recycling Ltd

<sup>7</sup> 2011/036 LWB Ltd

<sup>8</sup> 2006/405 Transclara, 2006/392 G Brandon

<sup>9</sup> 2010/367 Aspey Trucks Ltd, 2009/307 Anne Jones Edwards and Edward Anthony Jones

<sup>10</sup> See Statutory Guidance and Statutory Directions on Good Repute and Fitness

position. If a transport manager finds them-self overridden by the operator or their agent to the point at which the transport manager no longer has the requisite continuous and effective responsibility, the transport manager must first notify the operator in writing and then, if the matter is not resolved, is expected to take appropriate action. In certain cases this may even include resignation, rather than remain nominated and attempt to carry on their duties when being expressly prevented from doing so by their employer. The transport manager can exercise this responsibility alone or with the assistance of others.<sup>11</sup> Persons who control an entity which operates heavy goods or public service vehicles must have sufficient knowledge to exercise proper oversight.<sup>12</sup> The ultimate responsibility for supervising maintenance compliance rests on the operator and failures by employees or outside contractors is a matter for mitigation only.<sup>13</sup> However, Regulation (EC) 1071/2009 now enables traffic commissioners to take action against the individual transport manager alone.

26. A transport manager should also think carefully where there is an attempt to reduce the hours worked from those declared on the application. The transport manager should ensure that s/he has enough time so as to be able to comply with his/her duties.<sup>14</sup> Both the transport manager and the operator have a duty to notify the traffic commissioner of a reduction in the hours worked as a transport manager and where the transport manager resigns they should notify the traffic commissioner of that resignation through the Central Licensing Office.
27. As Article 4 of Regulation (EC) 1071/2009 makes clear, a transport manager must possess more than good repute, a qualification and sufficient hours to meet the statutory duty. S/he must be capable of actually managing the transport operation effectively. That may include an assessment not only of qualification but other facts such as knowledge or confidence to manage.<sup>15</sup>
28. These requirements apply equally to all operators regardless of the size of the organisation and are an important part in maintaining the relationship of trust upon which the licensing system is based.<sup>16</sup> An operator must supervise and monitor the actions of a transport manager<sup>17</sup> by, for example, checking the maintenance inspections, the annual test pass rate, the number of prohibitions issued, the DVSA Operator Compliance Risk Score, the arrangements for securing compliance with the drivers' hours' rules and tachograph regulations etc<sup>18</sup>.
29. Where a traffic commissioner finds that a transport manager has failed to live up to the standards expected the correct approach is to consider making a finding in respect of that transport manager's repute. It is not open to a traffic commissioner to find a loss of professional competence unless there is a finding that the transport manager has never been professionally competent or that there has been a previous declaration that the transport manager was unfit by reason of a loss of good repute and has already had their certificate of professional

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<sup>11</sup> 2003/343 Anglorom Trans (UK) & Others

<sup>12</sup> 2012/025 First Class Freight Ltd

<sup>13</sup> 1999/L56 Alison Jones t/a Jones Motors, Shamrock Coaches and Thomas Motor Services

<sup>14</sup> 2003/258 J Cowan, 2006/56 Paul Oven Transport

<sup>15</sup> 2014/58 Angus Smales t/a Angus Smales Eventing

<sup>16</sup> 2005/205 Eddie Stobart

<sup>17</sup> 1999/L56 Alison Jones t/a Jones Motors

<sup>18</sup> See General Responsibilities below

competence suspended. That is not to say that traffic commissioners do not have any authority to make findings concerning a transport manager's professional competence. There will be instances when it will be open to traffic commissioners to make a finding that a purported transport manager does not in fact hold a valid certificate of professional competence. Examples might include where it was forged, the holder was not entitled to the certificate in some other way, or that it has been suspended as a result of a finding of loss of good repute elsewhere. The Upper Tribunal has indicated that, in such instances, it would be difficult to envisage circumstances in which such a finding would amount to a "disproportionate response"<sup>19</sup>.

- 30.** In the past, where there was no power to revoke or withdraw a CPC on a finding against the transport manager<sup>20</sup>, the Transport Tribunal commented that where a company's licence was to be revoked, the traffic commissioner could also give a direction under section 28(5)(a) in respect of the transport manager if the transport manager was an officer (including a director) of the company. Whilst this position has changed under the provisions above, and reflecting Articles 13 and 14 of Regulation (EC) 1071/2009, there is scope for the traffic commissioner to allow a period of grace of *up to* 6 months where the transport manager no longer satisfies the requirement as to good repute any approach has to ensure fairness to *all* operators.<sup>21</sup> In order to grant a period of grace the traffic commissioner or staff acting under delegation must first establish that one or more of requirements is no longer satisfied. The traffic commissioner may then allow a period of grace to rectify the situation<sup>22</sup>. To quote the Upper Tribunal:

*"In our view, when considering whether or not to grant a period of grace, Traffic Commissioners will need some tangible evidence, beyond mere hope and aspiration, that granting a period of grace will be worthwhile, and that there are reasonable prospects for a good outcome. Some sort of analysis along these lines will be necessary because, amongst other reasons, Traffic Commissioners have to decide how long to grant. Moreover, as with a stay, there is no point in granting a period of grace if the likely effect is just to put off the evil day when regulatory action will have to be taken".*<sup>23</sup>

- 31.** The provisions also allow for the rehabilitation of a transport manager and Article 13(2) allows a traffic commissioner to disqualify a transport manager for a period or require that transport manager to in effect obtain a new Certificate of Professional Competence before acting as a transport manager again. A failure to appoint a replacement transport manager after a period of grace or to communicate with the traffic commissioner can amount to serious misconduct on the part of the operator.<sup>24</sup> A proposed transport manager will not meet the requirement on an operator until that appointment is authorised upon the traffic commissioner being satisfied that the proposed transport manager meets all the requirements of Article 4.<sup>25</sup>

*Employment – Genuine link (employment of Internal and External transport managers)*

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<sup>19</sup> 2015/049 Matthew Reynolds

<sup>20</sup> 2003/45 JJC Bulk Tippers, H & A Holdings, 2008/5 M Skellern, and Mistry (as at 2).

<sup>21</sup> 2011/022 Andrew John Chatter t/a AJC Vehicle Delivery & Collection

<sup>22</sup> 2015/040 Tacsí Gwynedd Ltd

<sup>23</sup> 2014/008 Duncan McKee

<sup>24</sup> 2012/001 Zeeshan Malik t/a Langston's Group, 2014/024 LA & Z Leonida t/a ETS, 2014/053 & 54 Carmel Coaches Ltd and Anthony Grove Hazell

<sup>25</sup> 2014/040-41 C G Cargo Ltd & Sukhwinder Singh Sandhu

- 32.** The key in determining whether or not a person is an employee (i.e. an internal transport manager), are the terms of employment; or is a service provider (i.e. an external transport manager), is the contract for supply of services.
- 33.** Terms or a contract of employment have not been comprehensively defined in legislation or case law. The courts have adopted various tests in order to determine whether or not a relationship amounts to a relationship of employment but the general approach is to consider all the factors relevant to the issue of employment and to weigh up those factors that point towards the existence of a contract of employment and those that point away from such a contract<sup>26</sup>. It will be helpful to ask the following three questions:
- Has the transport manager undertaken to provide their work and skill in return for remuneration?
  - Is there such a degree of control to enable the transport manager to fairly be called a 'servant'?
  - Are there any other factors inconsistent with the existence of a contract of service?
- 34.** The presence or absence of any one factor is not conclusive, as the decision depends on the combined effect of all the relevant information. The factors given should not be treated as a checklist to identify those factors that appear to point one way and those which point the other, from which a result can be calculated. It is the overall effect of the relationship between the parties involved that will lead to a conclusion on whether or not a person is employed. It is wholly unacceptable for the transport manager to sign a blank form, with the details to be added in at a later date or to make a commitment to minimum contractual hours which one or both of the parties then or subsequently departs from<sup>27</sup>.
- 35.** As with the test for who is an operator<sup>28</sup> the issue is usually one of control: for instance who is entitled to give the orders as to how the work should be done?<sup>29</sup> The greater the amount of control exercised over the details of the work to be done, the more likely the relationship is to be one of internal employment.<sup>30</sup> In general, a self-employed person (i.e. an external transport manager) is told what to do, but not how to do it. An employee is normally part of the employer's organisation and does their work as an integral part of the business whereas an independent contractor is not usually integrated into the organisation but is accessory to it.<sup>31</sup> The courts have also identified the following factors as useful in determining whether a person is an employee:
- the intention of the parties<sup>32</sup>;
  - whether the person performing the services provide their own equipment<sup>33</sup>;

<sup>26</sup> Carmichael v National Power plc [2000] IRLR 43 approved 3 questions posed by the judge in Readymix Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497

<sup>27</sup> 2006/252 Alec Hayden t/a Trans Consult

<sup>28</sup> 2004/426 E A Scaffolding & Systems Ltd

<sup>29</sup> Mersey Docks and Harbour Board v Coggins and Griffith (Liverpool) Ltd [1947] AC 1

<sup>30</sup> Simmons v Heath Laundry [1910] 1 K.B. 543

<sup>31</sup> Ready-Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497

<sup>32</sup> Ferguson v John Dawson Ltd [1976] IRLR 346

<sup>33</sup> Market Investigations Ltd v Minister of Social Security [1969] 2 QB 173, Ferguson v John Dawson Ltd [1976] IRLR 346

- whether they hire their own helpers<sup>34</sup>;
- what degree of financial risk they take;
- payment of income tax and National Insurance contributions;
- the degree of control<sup>35</sup>;
- what degree of responsibility for investment and management they have<sup>36</sup>;
- whether they have an opportunity of profiting from the management of the task.

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<sup>34</sup> *Stevenson Jordan and Harrison v MacDonald and Evans* [1952] 1 TLR 101

<sup>35</sup> *Lane v Shire Roofing Company Oxford Ltd* [1995] IRLR 493

<sup>36</sup> *Binding v Great Yarmouth Port and Haven Commissioners* (1923) 16 BWCC 28, *Humberstone v Northern Timber Mill* (1949) 79 CLR 389

## DIRECTIONS

36. The Senior Traffic Commissioner for Great Britain issues the following Directions to traffic commissioners under section 4C(1) of the Public Passenger Vehicles Act 1981 (as amended). These Directions are addressed to the traffic commissioners in respect of the approach to be taken by staff acting on behalf of individual traffic commissioners and dictate the operation of delegated functions in relation to the requirements for and on transport managers.

### Basis of Directions

37. In the interests of adopting a consistent approach to decision making, the directions set out below are designed to assist support staff who must decide whether to refer a proposed transport manager's case to the traffic commissioner for consideration and also the circumstances in which a traffic commissioner may wish to consider the suitability of a proposed transport manager at a public inquiry.
38. These directions are designed to assist staff when they are required to decide whether or not to refer a case to a traffic commissioner following the receipt of either a GV79, GV81 or GV80a or TM1 on goods operator licences and PSV 421 and PSV431a on PSV operator licences, indicating that a transport manager's suitability is in question and/or continuous and effective responsibility is in doubt. The Upper Tribunal has indicated that, whilst completion of the TM1 form is not mandatory if it is not completed then there will be a heavier burden on the applicant and in reality a completed paper or electronic form is likely to prove more satisfactory.<sup>37</sup> In practice members of staff working on behalf of the traffic commissioner are expected to ensure the completion and submission of a TM1.
39. External transport managers are limited to a maximum of 50 vehicles for up to a total of 4 operators. Whilst there are no statutory limitations on the number of standard licences for which a suitably qualified "internal" transport manager can be nominated, it is important to outline what the Senior Traffic Commissioner considers to be determining factors when assessing the suitability of a proposed transport manager within the legislative framework.
40. The holder of a standard international licence must engage a holder of an international Certificate of Professional Competence to act as transport manager.

### Determining Factors

41. Each case must be considered on its individual merits. If the proposed suitability of a transport manager is called into question and any concerns cannot be satisfied through correspondence, then that person and the relevant operator will be given an opportunity to state their case at a public inquiry or by issuing a notice and considering rehabilitation measures for the transport manager and giving the operator time to rectify any professional competence failings. The legal requirement is the same, irrespective of the size of operation, namely that the nominated transport manager must be able to exercise continuous and effective

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<sup>37</sup> LWB Ltd (as above)

management of the transport operation in so far as it relates to the carriage of goods or passengers. There are a number of determining factors that might be taken into consideration by a traffic commissioner or delegated person when considering the suitability of a transport manager.

42. Much of the information is already requested from applicants by staff acting on behalf of the traffic commissioners in the Central Licensing Office. Further information, however, may be requested by a traffic commissioner so that s/he may be completely satisfied that the requirements are met in all cases. Applicants for licences and existing operators are advised to comply quickly and accurately to any requests for information from staff in the Centralised Licensing Office.
43. Once the traffic commissioner is satisfied that particular proposals allow sufficient capacity for the nominated CPC holder(s) to meet the statutory duty to exercise effective and continuous management, and checks have confirmed the qualification and repute of the individual CPC holder, there should be no real need to revisit that assessment if direct replacements make the same commitment, or it is proposed to appoint additional transport managers over and above those already specified on a licence. This might also include the transfer of the operations, for instance where the award of contracts results in a transfer of staff under the Transfer of Undertaking (Protection of Employment) Regulations 2006, as amended (TUPE). These do not need to be referred to the traffic commissioner unless there is a current compliance issue. Any such variations might therefore proceed administratively under delegations and without further enquiries, subject to two important caveats:
- that there has been neither adverse compliance history on the ‘donor’ licence at the operating centres nor adverse history involving the individual CPC in the last two years;
  - that the applicant agrees to an undertaking that it will provide the relevant evidence of qualification, the TM1 forms and evidence of a genuine link within one month of the grant of the application.
44. These Directions are in the main concerned with whether a CPC holder can meet the statutory duty. The Statutory Guidance above provides examples of situations where transport managers have found to be lacking. Operators and applicants should therefore be alive to the types of questions which might be asked by or on behalf of the traffic commissioner. The other requirements are outlined below:

#### *Repute*

45. These Statutory Directions must be read in conjunction with the Statutory Guidance and Statutory Directions in respect of repute, as they apply to the transport manager, and with the Statutory Guidance and Statutory Directions regarding the principles of Decision Making. In particular the traffic commissioner will need to consider whether convictions or penalties for a serious infringement of the following provide compelling grounds to bring into question the repute of the operator and/or transport manager:
- commercial law;
  - insolvency law;

- pay and employment conditions in the profession;
  - road traffic law;
  - professional liability;
  - trafficking in human beings or drugs.
- 46.** In addition, to satisfy the repute requirement, the operator and/or the transport manager cannot have been convicted of a serious criminal offence or incurred a penalty for a serious infringement of Community rules relating in particular to:
- the driving time and rest periods of drivers, working time and the installation and use of recording equipment;
  - the maximum weights and dimensions of commercial vehicles used in international traffic;
  - the initial qualification and continuous training of drivers;
  - the roadworthiness of commercial vehicles, including the compulsory technical inspection of motor vehicles;
  - access to the market in international road haulage or, as appropriate, access to the market in road passenger transport;
  - safety in the carriage of dangerous goods by road;
  - the installation and use of speed-limiting devices in certain categories of vehicle;
  - driving licences;
  - admission to the occupation;
  - animal transport.

*Genuine Link (Internal and External Transport Managers)*

- 47.** A transport manager must also have a genuine link to the undertaking. The application and other forms require a declaration to be made that an internal transport manager has that genuine link. For an internal transport manager that might be demonstrated if the transport manager is:
- the licence holder; or
  - one of the partners whose name is on the licence; or
  - is a director of the company in whose name the licence is held; or
  - a full or part-time employee.
- 48.** Employment might be demonstrated in a number of ways, starting with tax and employee contributions. The traffic commissioner is entitled to check this during the application process or during the life of the licence and as against previous declarations by requesting proof of employment, such as a contract (see below and Annex 2 for general responsibilities).
- 49.** An external transport manager may be hired in to fulfil the role of transport manager under a contract which specifies the tasks he or she will perform as the transport manager. An external transport manager can only work for a maximum of 4 operators (not licences) with a combined total fleet of 50 authorised vehicles. The traffic commissioner may determine for reasons such as other determining factors set out in the attached Statutory Guidance and these Statutory Directions that for an individual that number should be less. It is possible to be an internal

transport manager for one operator and an external transport manager for another. However, in that case, the starting point will be to limit the number of operators and vehicles applicable to those set for external transport managers for all the licences.

50. As the above suggests, ultimately the determination of the internal and/or external status of a transport manager, is a matter for the traffic commissioner. A starting point may be to check whether the nominated CPC holder has even met with the applicant. It may be necessary to examine the terms of the contract of employment particularly where there is a group of companies involved. One of the purposes of the legislation is to avoid a situation where the transport manager acts in name only and does not have continuous and effective management of the transport operation. Where there is a history of short-term appointments which might indicate a CPC holder acting as akin to a transport manager for convenience further enquiries may be required so as to satisfy the traffic commissioner that the nominated CPC holder will actually exercise the responsibilities of transport manager.

### *General Responsibilities*

51. Due to the varying nature of different transport businesses it is not possible to list all of the duties which a transport manager might be expected to undertake. For the sake of completeness Annex 2 sets out the matters upon which CPC holders are deemed to have knowledge by virtue of passing the examination. Traffic Commissioners understand that various transport manager functions are often delivered by a number of individuals acting within a team. The key determinant is how the nominated transport manager manages the delivery of those functions as the transport manager retains ultimate responsibility for discharging his or her duties. The Senior Traffic Commissioner has therefore identified the following non-exhaustive list of the types of activity which might be expected of a transport manager:

- to manage, audit and review compliance systems to ensure that they are effective;
- to review any shortcomings such as prohibitions and/or annual test failures;
- to ensure that relevant changes are notified in accordance with operator licence requirements;
- to keep up to date on relevant changes in standards and legislation;

### *Drivers – administration*

- to ensure that drivers hold the appropriate licence for the vehicle they are driving (including non-GB vocational drivers from EU member states who are required to register their driving licences with DVLA within 12 months of being resident);
- to ensure that regular checks are carried out on the drivers' licences;
- to ensure that vocational drivers hold a valid driver CPC qualification (DQC);
- to ensure that all drivers hours records are kept for a period of no less than 12 months and are made available upon request;
- to ensure that all working time records are kept for a period of no less than 24 months and are made available upon request;

### *Drivers –management*

- to ensure compliance with the driving hours rules (EU or Domestic Hours rules);
- to ensure that drivers are recording their duty, driving time and rest breaks on the appropriate equipment or in drivers hours books and their records are being handed back for inspection as required;
- where appropriate, to download and store data from the vehicle digital tachograph unit (at least every 90 days) and from the drivers' tachograph smart cards (at least every 28 days);
- to ensure that drivers' hours records are retained and are available to be produced during the relevant period;
- to ensure that records are retained for the purposes of the Working Time Directive (WTD) and that they are available to be produced during the relevant period;
- to ensure that drivers are adequately trained and competent to operate all relevant vehicles and equipment;
- to contribute to relevant training and subsequent disciplinary processes as required;

### *Drivers - operations*

- to ensure that drivers are completing and returning their driver defect reporting sheets and that defects are recorded correctly;
- to ensure that all drivers and mobile workers take adequate breaks and periods of daily and weekly rest (as per the relevant regulations which apply);

### *Vehicle – administration*

- to ensure that vehicle maintenance records are retained for a period of no less than 15 months and are made available upon request;
- to ensure that vehicles are specified as required and that operator licence discs are current and displayed correctly;
- to ensure that vehicle payloads notifications are correct, height indicators are fitted and correct, and tachograph calibrations are up to date and displayed;
- to ensure that there are up to date certificates of insurance indemnifying company cars, commercial vehicles and plant;
- to ensure a suitable maintenance planner is completed and displayed appropriately, setting preventative maintenance inspection dates at least 6 months in advance and to include the Annual Test and other testing or calibration dates;

### *Vehicle - management*

- to ensure that vehicles and trailers are kept in a fit and roadworthy condition;
- to ensure that reported defects are either recorded in writing or in a format which is readily accessible and repaired promptly;
- to ensure that vehicles and trailers that are not roadworthy are taken out of service;
- to ensure that vehicles and towed equipment are made available for safety inspections, service, repair and statutory testing;
- to ensure that safety inspections and other statutory testing are carried out within the notified O-licence maintenance intervals (ISO weeks);

- to liaise with maintenance contractors, manufacturers, hire companies and dealers, as might be appropriate and to make certain vehicles and trailers are serviced in accordance with manufacturer recommendations.

**52.** To assist members of staff in assessing applications to appoint a particular CPC holder the Senior Traffic Commissioner has identified in Annex 1 those factors which might be relevant to the capacity of the individual to meet the statutory duty either alone or with the assistance of others. In assessing capacity, namely whether there is sufficient time to conduct transport manager functions properly, the Senior Traffic Commissioner has identified some general indicators as to effective transport management:

- knowledge and skills – as indicated this requires more than just the formal qualification;
- impact - where the individual CPC holder is recognised as a key person within the organisation so that s/he can influence decisions relevant to compliance and authority to deal with external contractors. Their position should reflect the professional and personal responsibility vested in the individual;
- decision making – where the individual CPC holder is sufficiently close to drivers to be able to influence their behaviours and senior enough to influence the deployment of resources and to inform the decisions of the owner/directors/partners.

### *Professional Competence*

**53.** Article 8(8) of Regulation (EC) 1071/2009 requires that at application stage professional competence will be demonstrated by production of a certificate which meets the security features and the model certificate annexed to the EU regulations and bears the seal of the duly authorised authority or body which issued it. In the case of digital applications electronic copies of original certificates must be uploaded with the application, however traffic commissioners and staff acting on their behalf reserve the right to request the original copy. In the case of a nominated transport manager who is already accepted to act in that capacity on another licence the repeat production of their certificate will not normally be required, provided that one of the traffic commissioners already holds a record of the original certificate. Again, traffic commissioners and staff acting on their behalf reserve the right to request the original certificate, wherever there is any doubt as to the qualification. Those with existing third-party qualifications will continue to be exempt from the CPC examination requirement and DfT aims to integrate them in future to the CPC regime. DfT has asked the bodies who currently issue exemptions to re-issue certificates in the new CPC format and no new exemptions will be issued. There will be no new National CPCs but existing certificates will remain valid for 'national' operations. Staff must also ensure that an original signed TM1 form is received from the applicant, or an electronic copy, in the case of digital applications. Traffic Commissioners and staff acting on their behalf reserve the right to request the original document. In line with Article 8(1) the holder of that certificate shall be deemed to possess knowledge corresponding to the level set out in Part I of the Annex to the Regulations (see Annex 2 to these Directions), unless found otherwise by a traffic commissioner or a competent authority in another Member State.

54. The statutory duty refers to effective management and the traffic commissioner might legitimately be concerned as to the currency of the nominated CPC holder's professional knowledge. The Senior Traffic Commissioner does not consider it unreasonable for CPC holders to be aware of the conditions and undertakings attached to the operator's licence upon which they are named nor, given the potential impact on an operator's reputation, to be aware of the most serious infringement provisions.<sup>38</sup> In those circumstances it may be appropriate to consider an undertaking that refresher training provided by a trade association, professional body or OCR approved examination centre offering the management CPC qualification be completed within a specified time with evidence of attendance to be produced.

#### *Acquired Rights (Formerly Known as 'Grandfather Rights')*

55. In line with Article 9, the previous 'Grandfather Rights' have been replaced by new 'Acquired Rights' certificates. The responsibility for issuing these certificates lies with the Secretary of State. They are issued on the basis of a declaration that the individuals in question can provide proof upon request that they have 'continuously managed' a road haulage or a road passenger transport operation in one or more Member States for the period of 10 years ending on 4 December 2009. Acquired Rights certificates are being automatically issued to all transport managers exercising 'grandfather rights' on an operator's licence at the date of implementation. Those holding 'Grandfather Rights' but not listed as a transport manager on an operator's licence at that date are also able to apply for an "Acquired Rights" certificate.
56. Only transport managers with existing Grandfather Rights are eligible to apply for Acquired Rights. Those who are not listed as a transport manager on a current operator's licence are required to apply to the Secretary of State for an Acquired Rights certificate by 4 December 2013.
57. The Secretary of State's decision is based on details contained in an application form. The details required include: the serial number of the current GFR certificate, date and place of birth (as required by the new UK National Register of Hire or Reward Operators), details of the work undertaken as a transport manager from 4 December 1999 to date including names and addresses (and O-licence numbers where possible) for all operators worked for. That information is therefore available from Department for Transport records.
58. A false declaration in order to obtain an Acquired Rights certificate will be treated as having a serious impact on the reputation of that transport manager and must be referred to a traffic commissioner.

#### *Appeals against Decisions Not to Issue an Acquired Rights Certificate*

59. The legislation refers to a redetermination (i.e. a revisiting of the process of deciding whether the exemption should apply). This will therefore be by way of a completely new consideration of the application. It may be by hearing, if requested, or on the papers. It will be for the individual traffic commissioner to decide on the structure of any hearing and the information required. As it is a

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<sup>38</sup> See Statutory Guidance and Statutory Directions on Good Reputation and Fitness

redetermination there will be no requirement for the Secretary of State or his nominee to be a party to that redetermination but the Secretary of State may apply to make representations and/or appear.<sup>39</sup> The law does not prevent new evidence being placed before the traffic commissioner but the commissioner considering the appeal may issue a time limit regarding the production of new evidence and may prevent any further evidence being admitted after that date.

### *Checking Transport Manager Records*

60. In October 2011 transport managers were requested to complete and return a questionnaire in order to populate the national register. Some operators used this opportunity to change the transport manager details without making an application as they were required to do. The questionnaire specifically required that the transport manager only list those licences for which they had been *authorised*. Staff should be alive to this risk when making checks against the records. If there has been a false declaration this will need to be referred to the traffic commissioner to consider whether or not to take regulatory action in respect of the named CPC holder and/or the operator.
61. A similar approach should be taken where the self-service facility has been used and there is no subsequent application lodged. The Upper Tribunal has also been critical of incidents where the name of the previous transport manager has been left on the record awaiting an application.<sup>40</sup>

### *Periods of Grace*

62. Regulation (EC) 1071/2009 (Annex 2) allows a traffic commissioner discretion where it is found that there is no accepted transport manager in place. The traffic commissioner can allow a period of provide a period of time of up to six months, which might be extended by 3 months in the event of the death or physical incapacity of the transport manager, to find a replacement transport manager. Where staff have grounds to suspect that there is no transport manager in place then the operator should be notified and given a limited time, for instance 14 days, to make written representations before the traffic commissioner decides whether to allow time for rectification and for what period. In order to allow a period of grace the traffic commissioner must establish that the requirement for a transport manager is no longer met. In practice this will usually be confirmed by the operator seeking to benefit from a period of grace. The Upper Tribunal has indicated that there should be tangible evidence that a period of grace will be worthwhile, in other words there are reasonable prospects that the mandatory requirement will be met before expiry of the specified period. The traffic commissioner can then be invited to decide how long to allow within the maximum periods permitted the legislation.

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<sup>39</sup> See Statutory Guidance and Statutory Directions on Case Management

<sup>40</sup> 2011/036 LWB Ltd

## ANNEX 1: STARTING POINT FOR ASSESSING THE CAPACITY TO EXERCISE CONTINUOUS AND EFFECTIVE MANAGEMENT IN SUBMISSIONS

**Starting point** The guidelines below refer to starting points only and give indicative weekly hours of work which might be specified by a transport manager but the traffic commissioner will consider all relevant factors in determining whether the starting points should be departed from. The level of hours required for any other employment, self employment or activities in which the proposed transport manager is engaged must also be taken into account as they may restrict their ability to devote sufficient time to the duties of a transport manager on any operator’s licence.

**Delegated Authority Applications** Where the starting point is met and there is no other relevant adverse information (see ‘Determining Factors’ below) the decision may be determined under delegated authority in accordance with existing delegations. Proposals which do not meet these guidelines must be referred to the relevant traffic commissioner for a decision. Once granted, direct replacements equating to the same commitment need not be referred to the traffic commissioner unless there is a current compliance issue.

### LEVEL OF AUTHORITY

The suggested amounts of time are a starting point as to what traffic commissioners might expect in terms of hours worked. They are intended as a prompt to operators/applicants and the nominated CPC holder to discuss what time is actually required to carry out the duties suggested at paragraph 51 above.

Motor Vehicles	Proposed Hours (per week)
2 or less	2-4
3 to 5	4-8
6 to 10	8-12
11 to 14	12-20
15 to 29	20-30
30 to 50	30-Full Time
Above 50	Full Time and additional assistance required

Additional hours may be required for trailers.

In respect of total hours traffic commissioners will be aware that the road transport working time legislation limits the average working week to 48 hours over a given reference period with no week within that reference period being over 60 hours. The horizontal working time legislation (non-EU regulated mobile workers) requires that ‘adequate rest’ be undertaken each week.

**Other factors** the matters set out in the following table might assist the traffic commissioner in making a decision on whether to go up or down from the starting points described above.

Factors which might assist the traffic commissioner in deciding on an application include:	
The terms upon which the proposed transport manager is to be employed.	The traffic commissioner may wish to see a copy of the contract of employment.
The number of operator licences and/or vehicles for which that transport manager will be responsible;	If a transport manager is already listed on at least 3 other licences; and/or if a transport manager is already responsible for 50 vehicles <sup>41</sup> .
The number of operating centres for which the transport manager is responsible both on that licence and any other operator's licences.	The geographical location of the transport manager in relation to the operator's business and all operating centres on all licences. The number of times and length of period that the transport manager intends to visit each operating centre.
Does the transport manager have any other duties in the organisation e.g. as a driver, director or contracts manager?	Traffic commissioners will wish to consider carefully any impact this may have on continuous and effective responsibility for the transport operations
Does the proposed transport manager have other employment with another employer (including as a driver) or are they also self employed in any capacity?	Traffic commissioners will wish to consider carefully any impact this may have on continuous and effective responsibility for the transport operations
Are effective systems in place so that the transport manager "either alone or jointly with one or more other persons, has continuous and effective responsibility for the management of the transport operations of the business"?	Who else is assisting the transport manager, what qualifications do they hold, how will they be supervised and how the transport manager will meet the obligation to exercise continuous and effective responsibility. What technology and management systems will be utilised?
	How does the compliance management of the organisation support the transport manager(s) in meeting the statutory duty?
Previous compliance history of licences with which the nominated transport manager has been involved <sup>42</sup> .	Details may be required together with details of any subsequent action taken by the transport manager.
Previous compliance history of the applicant/ operator.	

<sup>41</sup> These are starting points. EU Regulation (EC) No 1071/2009, from 4 December 2011, limits external transport managers to act for no more than 4 licence holders and a maximum of 50 vehicles (or fewer if Member States so choose), with a discretion allowed to the competent authority – see DfT Response to public consultation on the above dated August 2011.

<sup>42</sup> This should not require a submission to contain every compliance episode but checks should be completed to ensure that there has been no significant change.

Is the transport manager up to date with the current requirements of the operator licence?	How recently has the transport manager received training on his or her CPC duties? Details of the course, provider and certificate of attendance may be required.
The ability of the transport manager to ensure that the required records are completed and maintained.	Details of any issues regarding literacy and/or numeracy. Access to the required records as, when and where needed.
Does the transport manager have ready access to the relevant records including records of remedial action?	See Statutory Guidance and Statutory Directions on Operating Centres, Stable Establishments and Addresses for Service
The authority of the transport manager e.g. purchase of parts for vehicles or maintenance equipment, ability to 'hire and fire', proper access to online operator licence records	
A Certificate of Professional Competence (CPC) from any European Union member state <sup>43</sup> (after accession) should be taken as evidence of a transport manager's capability to perform that role, subject to matters that might affect the transport managers' good repute. These should be in the format required by annex 1a of 96/26 EC, as amended, by the accession of new Member States. The distinguishing signs of the relevant member state should be on the certificate as listed opposite.	(B) Belgium, (BG) Bulgaria, (CZ) Czech Republic, (DK) Denmark, (D) Germany, (EST) Estonia, (GR) Greece, (E) Spain, (F) France, (IRL) Ireland, (I) Italy, (CY) Cyprus, (LV) Latvia, (LT) Lithuania, (L) Luxembourg, (H) Hungary, (M) Malta, (NL) Netherlands, (A) Austria, (PL) Poland, (P) Portugal, (RO) Romania, (SLO) Slovenia, (SK) Slovakia, (FIN) Finland, (S) Sweden, (UK) United Kingdom.

<sup>43</sup> Administratively implements Directive 2004/66 (updating Directive 96/26/EC) on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations.

## **ANNEX 2: EU LEGISLATION**

Regulation 5 of the Road Transport Operator Regulations 2011 states that a standard licence constitutes an authorisation to engage in the occupation of road transport operator for the purposes of:

**Regulation (EC) 1071/2009 establishing common rules concerning conditions to be complied with to pursue the occupation of road transport operator repealed Council Directive 96/26 EC and applicable from 4<sup>th</sup> December 2011**

### **Article 3 - Requirements for engagement in the occupation of road transport operator**

1. Undertakings engaged in the occupation of road transport operator shall:

(d) have the requisite professional competence; and

2. Member States may decide to impose additional requirements, which shall be proportionate and non-discriminatory, to be satisfied by undertakings in order to engage in the occupation of road transport operator.

### **Article 4 -Transport manager**

1. An undertaking which engages in the occupation of road transport operator shall designate at least one natural person, the transport manager, who satisfies the requirements set out in Article 3(1)(b) and (d) and who:

(a) effectively and continuously manages the transport activities of the undertaking;

(b) has a genuine link to the undertaking, such as being an employee, director, owner or shareholder or administering it, or, if the undertaking is a natural person, is that person; and

(c) is resident in the Community.

2. If an undertaking does not satisfy the requirement of professional competence laid down in Article 3(1)(d), the competent authority may authorise it to engage in the occupation of road transport operator without a transport manager designated in accordance with paragraph 1 of this Article, provided that:

(a) the undertaking designates a natural person residing in the Community who satisfies the requirements laid down in Article 3(1)(b) and (d), and who is entitled under contract to carry out duties as transport manager on behalf of the undertaking;

(b) the contract linking the undertaking with the person referred to in point (a) specifies the tasks to be performed on an effective and continuous basis by that person, and indicates his or her responsibilities as transport manager. The tasks to be specified shall comprise, in particular, those relating to vehicle maintenance management, verification of transport contracts and documents, basic accounting, the assignment of loads or services to drivers and vehicles, and the verification of safety procedures;

(c) in his or her capacity as transport manager, the person referred to in point (a) may manage the transport activities of up to four different undertakings carried out with a combined maximum total fleet of 50 vehicles. Member States may decide to lower the number of undertakings and/or the size of the total fleet of vehicles which that person may manage; and

(d) the person referred to in point (a) performs the specified tasks solely in the interests of the undertaking and his or her responsibilities are exercised independently of any undertakings for which the undertaking carries out transport operations.

3. Member States may decide that a transport manager designated in accordance with paragraph 1 may not in addition be designated in accordance with paragraph 2, or may only be so designated in respect of a limited number of undertakings or a fleet of vehicles that is smaller than that referred to in paragraph 2(c).

4. The undertaking shall notify the competent authority of the transport manager or managers designated.

### **Article 6 - Conditions relating to the requirement of good repute**

1. Subject to paragraph 2 of this Article, Member States shall determine the conditions to be met by undertakings and transport managers in order to satisfy the requirement of good repute laid down in Article 3(1)(b).

In determining whether an undertaking has satisfied that requirement, Member States shall consider the conduct of the undertaking, its transport managers and any other relevant person as may be determined by the Member State. Any reference in this Article to convictions, penalties or infringements shall include convictions, penalties or infringements of the undertaking itself, its transport managers and any other relevant person as may be determined by the Member State.

The conditions referred to in the first subparagraph shall include at least the following:

(a) that there be no compelling grounds for doubting the good repute of the transport manager or the transport undertaking, such as convictions or penalties for any serious infringement of national rules in force in the fields of:

- (i) commercial law;
- (ii) insolvency law;
- (iii) pay and employment conditions in the profession;
- (iv) road traffic law;
- (v) professional liability;
- (vi) trafficking in human beings or drugs; and

(b) that the transport manager or the transport undertaking have not in one or more Member States been convicted of a serious criminal offence or incurred a penalty for a serious infringement of Community rules relating in particular to:

- (i) the driving time and rest periods of drivers, working time and the installation and use of recording equipment;
- (ii) the maximum weights and dimensions of commercial vehicles used in international traffic;
- (iii) the initial qualification and continuous training of drivers;
- (iv) the roadworthiness of commercial vehicles, including the compulsory technical inspection of motor vehicles;
- (v) access to the market in international road haulage or, as appropriate, access to the market in road passenger transport;
- (vi) safety in the carriage of dangerous goods by road;
- (vii) the installation and use of speed-limiting devices in certain categories of vehicle;
- (viii) driving licences;
- (ix) admission to the occupation;
- (x) animal transport.

2. For the purposes of point (b) of the third subparagraph of paragraph 1:

(a) where the transport manager or the transport undertaking has in one or more Member States been convicted of a serious criminal offence or incurred a penalty for one of the most serious infringements of Community rules as set out in Annex IV, the competent authority of the Member State of establishment shall carry out in an appropriate and timely manner a duly completed administrative procedure, which shall include, if appropriate, a check at the premises of the undertaking concerned.

The procedure shall determine whether, due to specific circumstances, the loss of good repute would constitute a disproportionate response in the individual case. Any such finding shall be duly reasoned and justified.

If the competent authority finds that the loss of good repute would constitute a disproportionate response, it may decide that good repute is unaffected. In such case, the reasons shall be recorded in the national register. The number of such decisions shall be indicated in the report referred to in Article 26(1).

If the competent authority does not find that the loss of good repute would constitute a disproportionate response, the conviction or penalty shall lead to the loss of good repute;

(b) the Commission shall draw up a list of categories, types and degrees of seriousness of serious infringements of Community rules which, in addition to those set out in Annex IV, may lead to the loss of good repute. Member States shall take

into account information on those infringements, including information received from other Member States, when setting the priorities for checks pursuant to Article 12(1).

Those measures, designed to amend non-essential elements of this Regulation by supplementing it and which relate to this list, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

To this end, the Commission shall:

(i) lay down the categories and types of infringement which are most frequently encountered;

(ii) define the degree of seriousness of infringements according to their potential to create a risk of fatalities or serious injuries; and

(iii) provide the frequency of occurrence beyond which repeated infringements shall be regarded as more serious, by taking into account the number of drivers used for the transport activities managed by the transport manager.

3. The requirement laid down in Article 3(1)(b) shall not be satisfied until a rehabilitation measure or any other measure having an equivalent effect has been taken pursuant to the relevant provisions of national law.

## **Article 8 - Conditions relating to the requirement of professional competence**

1. In order to satisfy the requirement laid down in Article 3(1)(d), the person or persons concerned shall possess knowledge corresponding to the level provided for in Part I of Annex I in the subjects listed therein. That knowledge shall be demonstrated by means of a compulsory written examination which, if a Member State so decides, may be supplemented by an oral examination. Those examinations shall be organised in accordance with Part II of Annex I. To this end, Member States may decide to impose training prior to the examination.

2. The persons concerned shall sit the examination in the Member State in which they have their normal residence or the Member State in which they work.

'Normal residence' shall mean the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal ties which show close links between that person and the place where he is living.

However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who, consequently, lives in turn in different places situated in two or more Member States, shall be regarded as being in the place of his personal ties, provided that such person returns there regularly. This last condition shall not be required where the person is living in a Member State in order to carry out a task of a definite duration. Attendance at a university or school shall not imply transfer of normal residence.

3. Only the authorities or bodies duly authorised for this purpose by a Member State, in accordance with criteria defined by it, may organise and certify the written and oral examinations referred to in paragraph 1. Member States shall regularly verify that the

conditions under which those authorities or bodies organise the examinations are in accordance with Annex I.

4. Member States may duly authorise, in accordance with criteria defined by them, bodies to provide applicants with high-quality training to prepare them for the examinations and transport managers with continuous training to update their knowledge if they wish to do so. Such Member States shall regularly verify that these bodies at all times fulfil the criteria on the basis of which they were authorised.

5. Member States may promote periodic training on the subjects listed in Annex I at 10-year intervals to ensure that transport managers are aware of developments in the sector.

6. Member States may require persons who possess a certificate of professional competence, but who have not managed a road haulage undertaking or a road passenger transport undertaking in the last 5 years, to undertake retraining in order to update their knowledge regarding the current developments of the legislation referred to in Part I of Annex I.

7. A Member State may exempt the holders of certain higher education qualifications or technical education qualifications issued in that Member State, specifically designated to this end and entailing knowledge of all the subjects listed in Annex I from the examination in the subjects covered by those qualifications. The exemption shall only apply to those sections of Part I of Annex I for which the qualification covers all subjects listed under the heading of each section.

A Member State may exempt from specified parts of the examinations holders of certificates of professional competence valid for national transport operations in that Member State.

8. A certificate issued by the authority or body referred to in paragraph 3 shall be produced as proof of professional competence. That certificate shall not be transferable to any other person. It shall be drawn up in accordance with the security features and the model certificate set out in Annexes II and III and shall bear the seal of the duly authorised authority or body which issued it.

9. The Commission shall adapt Annexes I, II and III to technical progress. Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

10. The Commission shall encourage and facilitate the exchange of experience and information between Member States, or through any body it may designate, concerning training, examinations and authorisations.

## **Article 9 - Exemption from examination**

Member States may decide to exempt from the examinations referred to in Article 8(1) persons who provide proof that they have continuously managed a road haulage undertaking or a road passenger transport undertaking in one or more Member States for the period of 10 years before 4 December 2009.

## **Article 13 - Procedure for the suspension and withdrawal of authorisations**

1. Where a competent authority establishes that an undertaking runs the risk of no longer fulfilling the requirements laid down in Article 3, it shall notify the undertaking thereof. Where a competent authority establishes that one or more of those requirements is no longer satisfied, it may set one of the following time limits for the undertaking to rectify the situation:

(a) a time limit not exceeding 6 months, which may be extended by 3 months in the event of the death or physical incapacity of the transport manager, for the recruitment of a replacement transport manager where the transport manager no longer satisfies the requirement as to good repute or professional competence;

2. The competent authority may require an undertaking whose authorisation has been suspended or withdrawn to ensure that its transport managers have passed the examinations referred to in Article 8(1) prior to any rehabilitation measure being taken.

3. If the competent authority establishes that the undertaking no longer satisfies one or more of the requirements laid down in Article 3, it shall suspend or withdraw the authorisation to engage in the occupation of road transport operator within the time limits referred to in paragraph 1 of this Article.

## **Article 14 - Declaration of unfitness of the transport manager**

1. Where a transport manager loses good repute in accordance with Article 6, the competent authority shall declare that transport manager unfit to manage the transport activities of an undertaking.

2. Unless and until a rehabilitation measure is taken in accordance with the relevant provisions of national law, the certificate of professional competence, referred to in Article 8(8), of the transport manager declared to be unfit, shall no longer be valid in any Member State.

## **Article 21 - Certificates of professional competence**

1. Member States shall recognise as sufficient proof of professional competence a certificate which complies with the model certificate set out in Annex III and which is issued by the authority or body duly authorised for that purpose.

2. A certificate issued before 4 December 2011 as proof of professional competence pursuant to the provisions in force until that date shall be deemed to be equivalent to a certificate which complies with the model certificate set out in Annex III and shall be recognised as proof of professional competence in all Member States. Member States may require that holders of certificates of professional competence valid only for

national transport pass the examinations, or parts of the examinations, referred to in Article 8(1).

## **EU ANNEX 1 - 1. LIST OF SUBJECTS REFERRED TO IN ARTICLE 8**

The knowledge to be taken into consideration for the official recognition of professional competence by Member States must cover at least the subjects listed below for road haulage and road passenger transport respectively. In relation to these subjects, applicant road haulage and road passenger transport operators must have the levels of knowledge and practical aptitude necessary for the management of a transport undertaking.

The minimum level of knowledge, as indicated below, may not be below level 3 of the training-level structure laid down in the Annex to Council Decision 85/368/EEC<sup>44</sup>

(1), namely the level of knowledge acquired during the course of compulsory education, which is supplemented either by vocational training and supplementary technical training or by secondary school or other technical training.

### **A. Civil law**

The applicant must, in particular, in relation to road haulage and passenger transport:

1. be familiar with the main types of contract used in road transport and with the rights and obligations arising there from;
2. be capable of negotiating a legally valid transport contract, notably with regard to conditions of carriage;

in relation to road haulage:

3. be able to consider a claim by his principal regarding compensation for loss of or damage to goods during transportation or for their late delivery, and to understand how such a claim affects his contractual liability;
4. be familiar with the rules and obligations arising from the CMR Convention on the Contract for the International Carriage of Goods by Road;

in relation to road passenger transport:

5. be able to consider a claim by his principal regarding compensation for injury to passengers or damage to their baggage caused by an accident during transportation, or regarding compensation for delays, and to understand how such a claim affects his contractual liability.

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<sup>44</sup> Council Decision 85/368/EEC of 16 July 1985 on the comparability of vocational training qualifications between the Member States of the European Community (OJ L 199, 31.7.1985, p. 56).

## **B. Commercial law**

The applicant must, in particular, in relation to road haulage and passenger transport:

1. be familiar with the conditions and formalities laid down for plying the trade, the general obligations incumbent upon transport operators (registration, record keeping, etc.) and the consequences of bankruptcy;
2. have appropriate knowledge of the various forms of commercial companies and the rules governing their constitution and operation.

## **C. Social law**

The applicant must, in particular, in relation to road haulage and passenger transport, be familiar with the following:

1. the role and function of the various social institutions which are concerned with road transport (trade unions, works councils, shop stewards, labour inspectors, etc.);
2. the employers' social security obligations;
3. the rules governing work contracts for the various categories of worker employed by road transport undertakings (form of the contracts, obligations of the parties, working conditions and working hours, paid leave, remuneration, breach of contract, etc.);
4. the rules applicable to driving time, rest periods and working time, and in particular the provisions of Regulation (EEC) No 3821/85, Regulation (EC) No 561/2006, Directive 2002/15/EC of the European Parliament and of the Council(1) and Directive 2006/22/EC, and the practical measures for applying those provisions; and
5. the rules applicable to the initial qualification and continuous training of drivers, and in particular those deriving from Directive 2003/59/EC of the European Parliament and of the Council<sup>45</sup>

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<sup>45</sup> Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers (OJ L 226, 10.9.2003, p. 4).

## **D. Fiscal law**

The applicant must, in particular, in relation to road haulage and passenger transport, be familiar with the rules governing:

1. value added tax (VAT) on transport services;
2. motor-vehicle tax;
3. the taxes on certain road haulage vehicles and tolls and infrastructure user charges;
4. income tax.

## **E. Business and financial management of the undertaking**

The applicant must, in particular, in relation to road haulage and passenger transport:

1. be familiar with the laws and practices regarding the use of cheques, bills of exchange, promissory notes, credit cards and other means or methods of payment;
2. be familiar with the various forms of credit (bank credit, documentary credit, guarantee deposits, mortgages, leasing, renting, factoring, etc.) and the charges and obligations arising there from;
3. know what a balance sheet is, how it is set out and how to interpret it;
4. be able to read and interpret a profit and loss account;
5. be able to assess the undertaking's profitability and financial position, in particular on the basis of financial ratios;
6. be able to prepare a budget;
7. be familiar with the cost elements of the undertaking (fixed costs, variable costs, working capital, depreciation, etc.), and be able to calculate costs per vehicle, per kilometre, per journey or per tonne;
8. be able to draw up an organisation chart relating to the undertaking's personnel as a whole and to organise work plans, etc.;
9. be familiar with the principles of marketing, publicity and public relations, including transport services, sales promotion and the preparation of customer files, etc.;
10. be familiar with the different types of insurance relating to road transport (liability, accidental injury/life insurance, non-life and luggage insurance) and the guarantees and obligations arising there from;
11. be familiar with the applications of electronic data transmission in road transport;

in relation to road haulage:

12. be able to apply the rules governing the invoicing of road haulage services and know the meaning and implications of Inco terms;
13. be familiar with the different categories of transport auxiliaries, their role, their functions and, where appropriate, their status;

in relation to road passenger transport:

14. be able to apply the rules governing fares and pricing in public and private passenger transport;
15. be able to apply the rules governing the invoicing of road passenger transport services.

## **F. Access to the market**

The applicant must, in particular, in relation to road haulage and passenger transport, be familiar with the following:

1. the occupational regulations governing road transport for hire or reward, industrial vehicle rental and subcontracting, and in particular the rules governing the official organisation of the occupation, admission to the occupation, authorisations for intra-Community and extra-Community road transport operations, inspections and penalties;
2. the rules for setting up a road transport undertaking;
3. the various documents required for operating road transport services and the introduction of checking procedures to ensure that the approved documents relating to each transport operation, and in particular those relating to the vehicle, the driver, the goods and luggage are kept both in the vehicle and on the premises of the undertaking;

in relation to road haulage:

4. the rules on the organisation of the market in road haulage services, as well as the rules on freight handling and logistics;
5. border formalities, the role and scope of T documents and TIR carnets, and the obligations and responsibilities arising from their use;

in relation to road passenger transport:

6. the rules on the organisation of the market in road passenger transport;
7. the rules for introducing road passenger transport services and the drawing up of transport plans.

## **G. Technical standards and technical aspects of operation**

The applicant must, in particular, in relation to road haulage and passenger transport:

1. be familiar with the rules concerning the weights and dimensions of vehicles in the Member States and the procedures to be followed in the case of abnormal loads which constitute an exception to these rules;
2. be able to choose vehicles and their components (chassis, engine, transmission system, braking system, etc.) in accordance with the needs of the undertaking;
3. be familiar with the formalities relating to the type approval, registration and technical inspection of these vehicles;
4. understand what measures must be taken to reduce noise and to combat air pollution by motor vehicle exhaust emissions;
5. be able to draw up periodic maintenance plans for the vehicles and their equipment;

in relation to road haulage:

6. be familiar with the different types of cargo-handling and loading devices (tailboards, containers, pallets, etc.) and be able to introduce procedures and issue instructions for loading and unloading goods (load distribution, stacking, stowing, blocking and chocking, etc.);
7. be familiar with the various techniques of 'piggy-back' and roll-on roll-off combined transport;
8. be able to implement procedures to comply with the rules on the carriage of dangerous goods and waste, notably those arising from Directive 2008/68/EC<sup>46</sup>(1) and Regulation (EC) No 1013/2006<sup>47</sup>
9. be able to implement procedures to comply with the rules on the carriage of perishable foodstuffs, notably those arising from the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be used for such Carriage (ATP);
10. be able to implement procedures to comply with the rules on the transport of live animals.

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<sup>46</sup> Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods(OJ L 260, 30.9.2008, p. 13). (1) and Regulation (EC) No 1013/2006(2)

<sup>47</sup> Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190,12.7.2006, p. 1). (2);

## **H. Road safety**

The applicant must, in particular, in relation to road haulage and passenger transport:

1. know what qualifications are required for drivers (driving licence, medical certificates, certificates of fitness, etc.);
2. be able to take the necessary steps to ensure that drivers comply with the traffic rules, prohibitions and restrictions in force in different Member States (speed limits, priorities, waiting and parking restrictions, use of lights, road signs, etc.);
3. be able to draw up instructions for drivers to check their compliance with the safety requirements concerning the condition of the vehicles, their equipment and cargo, and concerning preventive measures to be taken;
4. be able to lay down procedures to be followed in the event of an accident and to implement appropriate procedures to prevent the recurrence of accidents or serious traffic offences;
5. be able to implement procedures to properly secure goods and be familiar with the corresponding techniques;

in relation to road passenger transport:

6. have elementary knowledge of the layout of the road network in the Member States.