Department for Transport

Response to public consultation on implementing EC Regulation 1071/2009 rules concerning the occupation of road transport operator

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Introduction

1. The rules on the operator licensing (O-licensing) of lorries, coaches and buses are substantially based on an existing EC Directive[1] that sets out common rules that all EC member states must apply to their domestic O-licensing systems for hire and reward operators. That Directive will be replaced by a new EC Regulation[2] which will apply from 4 December 2011. This Regulation makes a number of changes to the rules that will affect how the requirements to apply for and hold a Hire or Reward (Standard) O-licence will operate in Great Britain.

2. In implementing required changes, the Department for Transport's approach is to pursue policies that as far as possible will reduce the burden of the new Regulation on both industry and regulators.

3. The Department carried out a 6-week consultation exercise between 4 April and 20 May 2011 to seek views on the policy approach to be taken.

4. The Department received 21 responses to the consultation exercise. This document summarises the responses received on each question asked in the consultation, provides the Department's response to each and summarises the outcome in terms of taking the issues forward.

5. The Department, Traffic Commissioners and the Office of the Traffic Commissioners (OTC) will ensure operators and transport managers are provided with all necessary information to help them comply with new regulations. Initial outline guidance will be provided in September 2011, this will summarise what action has to be taken by operators and transport managers over the coming months. Until that is published there is no need for operators or transport managers to take any action.

6. It is expected that a questionnaire will be sent by the Office of the Traffic Commissioners to standard goods vehicle operator licence holders and PSV licence holders in late September. The questionnaire will be accompanied with sufficient guidance to allow the questionnaire to be completed.

[1] 96/26/EC as amended by Council Directive 98/76/EC and 2004/66/EC
[2] EC Regulation 1071/2009

7. Revised guidance for operators (GV74 and PSV437) and new operator licence application forms will be issued in October by the OTC. Senior Traffic Commissioner Directions and Guidance are expected to be issued in late 2011.

Executive summary

This section summarises the responses from industry to the consultation on the implementation of the new EC Regulation that will apply to hire or reward goods and PSV operator licensing from the 4th December 2011.

The section also summarises what the Department proposes to do next as a result of the feedback from consultees. The following paragraphs detail all the questions asked and the outcome from the consultation process.

CHAPTER 1 – TRANSPORT MANAGERS

Q.1 *Are the new definitions of 'internal' and 'external' transport manager clear? Is the 4/50 rule for 'external' transport managers understood?*

Outcome: The responses suggest that the Department's definitions of 'internal' and 'external' transport manager, as well as the 4/50 rule are understood. The proposed definition in the consultation will be taken forward in guidance to industry.

Q.2 *Do you have any views on the list of core topics for the 'external' transport manager contract at Annex A of Chapter 1?*

Outcome: The Department will ensure guidance will be provided when transport managers and operators are asked to provide any information.

Q.3 *Do you agree that an 'internal' transport manager should have the flexibility to work, on a part-time basis, as an 'external' transport manager?*

Outcome: To take advantage of the derogation available in the Regulation the Department will make legislative provision to allow an internal transport manager to be able to also work as an external transport manager for third parties.

Q.4 *Are the new arrangements for disqualifying transport managers clear?*

Outcome: Guidance will be provided and the Department will make appropriate provision in domestic legislation for the arrangements as described in the consultation document as required by the regulation – i.e:

(a) Allow TCs to take direct regulatory action against transport managers;

(b) TCs can declare a transport manager ‘unfit’ and specify rehabilitation measures; and

(c) A declaration of unfitness would be entered into the national register and apply across the EU until the ban is lifted.

Q.5 *Do you have any views on the guidance at Annex B of Chapter 1 for deciding whether an individual is an ‘internal’ or ‘external’ transport manager?*

Outcome: Self-declaration by operators and transport managers will be adequate and is the lightest regulatory method of implementing the requirement. The STC will provide guidance to industry on what approach TCs should take if there is a dispute.

Q.6 *Are there any other areas or issues where you feel further explanations would be useful?*

Outcome: The Department does not plan to issue any further guidance or explanations in respect of these additional points.

CHAPTER 2 – FINANCIAL STANDING

Q.1 *Do you agree that the no further guidance is necessary on completing certified annual accounts?*

Outcome: Given the burden of compliance with the regulation is with the operator, the Department does not believe it is necessary to require operators to provide a TC (traffic commissioner) with copies of annual accounts on an ongoing and continuous basis in all cases. Instead, operators should sign a declaration at licence application stage that they possess the accounts required by the TC that demonstrate the required financial standing - with a commitment to providing the appropriate documentation to a TC, if requested, within a suitable period.

Q.2 *Do you consider that new applicants providing a certified opening balance is a proper demonstration of financial standing for the first year of trading?*

Outcome: A certified opening balance should be allowed as proof of financial standing upon application, annual accounts, financial guarantee or other documents at the discretion of a TC can be used thereafter. (Further guidance will be provided by OTC to assist applicants).

Q.3 *Do you agree that Traffic Commissioners should allow financial standing to be demonstrated via a financial guarantee? Are there any other forms of guarantee that should be added to the list at Annex A of Chapter 2?*

Outcome: The Department wishes to adopt the derogation to allow financial standing to be demonstrated by a financial guarantee. (Guidance for industry will be provided by the STC).

Q.4 *Is the guidance clear at Annex B of Chapter 2 on who is properly qualified to certify annual accounts?*

Outcome: Guidance will be provided by the OTC to communicate this information to all stakeholders

CHAPTER 3 - CERTIFICATES OF PROFESSIONAL COMPETENCE, THIRD PARTY QUALIFICATIONS AND 'GRANDFATHER RIGHTS

Q.1 *Do you agree that the Department should continue to allow existing third-party qualifications to provide an exemption from the CPC examination?*

Outcome: Those with existing third-party qualifications can continue to be exempt from the CPC examination requirement.

It should be noted that the position on third-party qualifications going forward is changing. The Department is working with current third-party exemption providers and Ofqual to integrate them into the CPC regime. This regime will be in place by 4 December 2011 when the new Regulation applies.

Those who currently hold a third-party exemption can continue to use it as proof of professional competence. Third-party exemption providers who have issued exemptions will be in contact with exemption holders later in 2011 to formalise the exemptions with new certification. After 4 December there will be no new exemptions from the Transport Manager CPC. New Transport Managers will need to pass an accredited CPC examination.

Q.2 *Should the Department continue to offer 'grandfather rights' as an exemption from the need for exam qualification?*

Outcome: Those with pre-existing grandfather rights will be able to renew grandfather rights as an exemption to the CPC examination (please see response to question 3 below for more details).

Q.3 *Do you agree with the two tests in paragraph 10 as a means of proving an entitlement to grandfather rights? If not, what alternative tests would you propose and why?*

Outcome: Considering the practicalities and the desire to minimise burdens on transport managers, the process for renewal of grandfather rights will be as follows:

Transport managers who are currently listed on an O-licence as meeting the professional competence requirement through grandfather rights will maintain those grandfather rights and be issued with new certification automatically. This should allow those currently working to continue to do so without issue.

However, there will be a small number of existing grandfather rights holders who will wish to maintain those rights under the Regulation but who are not currently on an operator's licence. This will be possible for many grandfather rights holders who are fulfilling the TM role in operators with Restricted licenses now or have worked in the role in recent years, therefore an application process will be developed that will allow the Department to make a determination for rights holders (the process for this will be advised by the Department in October 2011).

Q.4 *Do you agree that the 'window' to claim grandfather rights should not extend beyond December 2013? If not, what date would you propose and why?*

Outcome: The Department will implement the cut-off date of December 2013 for any renewed applications for grandfather rights for use on a hire or reward O-licence where the requirements of the Regulation apply. The Department will handle applications and will decide who will be given renewed grandfather rights, with appeals determined by a Traffic Commissioner.

Q.5 *Which of the two options in paragraph 14 of Chapter 3 would you prefer for transport managers providing proof to a prospective employer that they have grandfather rights?*

Outcome: In line with option (b), the Department will issue each qualifying transport manager with a new 'acquired rights (previously known as grandfather rights)' certificate. In addition, OTC will keep a master list of rights holders.

Q.6 *Do you agree that the additional derogations listed in paragraph 17 should not be pursued?*

Outcome: To minimise burdens of business and individuals, none of the provisions listed will be adopted.

CHAPTER 4 – ESTABLISHMENT AND OTHER ISSUES

Q.1 *Are there any other details that operators would wish to provide, as an alternative to operating centre or correspondence address?*

Outcome: To maintain maximum flexibility the Department will implement the proposal in the consultation document that operators should be asked to supply a correspondence address and the address(es) of their operating centre(s) if different.

Q.2 *Does the abolition of the use of PO Box addresses and third-party administrators to prove establishment cause specific problems? How might they be resolved?*

Outcome: The use of PO Box addresses and third-party administrators will be abolished. The OTC will be contacting all operators who fall into this category with advice on what operators will need to do to ensure ongoing compliance with the new Regulation.

Q.3 *Is there any additional documentation that operators should be required to be kept at their specified premises? Like vehicle test certificates and registration documents, TM CPCs, driver licences, maintenance records, safety inspection programme, copies of prohibitions, lists of directors, driver rosters, driver defect reports, etc*

Outcome: To minimise the burden on businesses the requirements about document storage will not be extended and the Traffic Commissioners will be asked by the Department to consider ways to revise the requirements with a view to reducing burdens on business.

Q.4 *Does the requirement to provide proof of possession of at least one vehicle cause problems? How might this be addressed?*

Outcome: Having access to a vehicle will be a minimum requirement as explicitly required by the Regulation. If requested by a TC an operator will need to prove that there is a formal arrangement for at least one vehicle to be at the disposal of the operator. The TC has a discretion to allow a period of grace of up to 6 months for the operator to demonstrate compliance. The STC will provide guidance for operators so there is clarity about what is acceptable.

Q.5 *Do you agree that undertakings involved in road passenger transport services exclusively for non-commercial purposes or which have a main occupation other than that of road transport operator should remain outside the scope of the Regulation? If not, why?*

Outcome: Passenger carrying services exclusively for non-commercial purposes or which have a main occupation other than that of road transport operator will remain outside the scope of EU operator licensing requirements.

Q.6 *Do you agree that the maximum fine for operating a PSV without a valid O-licence should be increased from £2,500 to £5,000?*

Outcome: The maximum fine for PSV vehicle operators operating without an O-licence shall become £5,000, bringing it into line with the maximum fine for goods operators committing the same offence.

Q.7 *Should the maximum fine for PSV and goods vehicle operators not declaring a notifiable conviction be the same as for operating without an O-licence?*

Outcome: The maximum fine for PSV and goods vehicle operators not declaring a notifiable conviction will be made the same as for operating without an O-licence.

CHAPTER 5 – NATIONAL REGISTERS

Q.1 *Do you agree that until 31 December 2015 we should only include the most serious infringements as part of the national register requirement?*

Outcome: The national register will only be required to include the most serious infringements until 31 December 2015.

Q.2 *Do you have any comments on our interpretation of the data required to be held on the UK national register, as set out in the Annex to that chapter?*

Outcome: The Department will implement the table of data as set out in the consultation document.

DRAFT IMPACT ASSESSMENT

Do you agree that the draft impact assessment accurately estimates expected costs and benefits from introducing these regulatory changes?

Outcome: The Department will continue to use the impact assessment.

Abbreviations used in the text.

Organisations responding to the consultation;

ACPOS – Association of Chief Police Officers in Scotland
CILT – Chartered Institute of Logistics and Transport
CT – Compass Travel
CPT – Confederation of Passenger Transport
FB – Friendberry Ltd
FG – FirstGroup PLC
FTA – Freight Transport Association
FUW – Farmers Union of Wales
ICO – Information Commissioner's Office
IoTA – Institute of Transport Administration
JEFCS – JEF Care Services
KTC – KTC Edibles Ltd
NELC - North East Lincolnshire Council
PTEG – Passenger Transport Executive Group
RHA – Road Haulage Association
RoSPA – Royal Society for the Prevention of Accidents
SC – Stagecoach Group PLC
SfL – Skills for Logistics
STC – Senior Traffic Commissioner
TCs – Traffic Commissioners

The Scottish Environmental Protection Agency also responded with a nil return.

Other abbreviations

CPC - Certificate of Professional Competence
OTC - Office of the Traffic Commissioners

Detailed summary of responses

Chapter 1 - Transport Managers

Q.1 *Are the new definitions of 'internal' and 'external' transport manager clear? Is the 4/50 rule for 'external' transport managers understood?*

Analysis of responses

There was a consensus among the ten respondents that the proposed new definitions of 'internal' and 'external' transport manager were clear.

The Association of Chief Police Officers in Scotland (**ACPOS**) thought the definitions offered an opportunity for transport managers to have a far greater knowledge of each company they are involved in than at the present time. The Institute of Transport Administration (**IoTA**) thought that 50 vehicles spread over a number of companies was perhaps too high.

The Senior Traffic Commissioner (**STC**) thought that Traffic Commissioners (**TCs**) should take into account whether a transport manager manages the safe operation of HGV trailers and light goods vehicles in addition to the 50 vehicles. He expressed concern that the total number of these might limit a transport manager's capability effectively and continuously to manage operations within the limits - and therefore consideration should be given whether to reduce one or both of these limits. The other TCs thought that the 4/50 rule was acceptable as a maximum and that statutory directions and guidance would need to be amended to reflect the new arrangements. TCs would still take an interest in the genuineness of the arrangements, including travelling time to locations.

The Freight Transport Association (**FTA**) supported the proposed interpretation that an 'operator' for the purposes of the 4 operator rule should be an individual or legal person (e.g. sole trader, partnership, company), who could each hold more than one O-licence. However, FTA also thought that the proposal for the application of the 4/50 rule needed to take into account compliance managed at group level – where it is possible that the transport manager named on the O-licence will be employed a related company or subsidiary rather than by the O-licence holder itself. They fear that if this is not taken into account, large multi-centred undertakings could find their existing, highly effective specialised compliance structures not being considered compliant with the regulation. They

suggested that the use of compliance teams should be allowed and that these transport managers (**TMs**) would be classed at internal. They also believe that an undertaking should include a group of organisations, regardless of whether the individual companies of the group hold separate licences or a group licence.

Building on this, the FTA also urged that the requirement of 'continuous and effective control' should keep pace with the 21st century information age – and that the notion that if a transport manager cannot, for example, visit all the operating centres for which he is responsible in a week he may not necessarily meet this requirement. They also said that transport managers are often responsible solely for the specific areas of compliance (e.g. one for roadworthiness, another for drivers hours etc) and that the O-licence application process should take account of this.

FTA asked for a positive statement from the Department that the 4/50 rule should not in any way be interpreted as a guide to the limits for an internal transport manager, and that this should continue to remain at the discretion of the traffic commissioner. They suggested that the term 'undertaking' should be used to describe the transport company at which the transport manager works, to avoid confusion with 'operator licences'. The Road Haulage Association (RHA) asked that comprehensive advice should be available.

DfT response

The Regulation is clear that the 4/50 limit for 'external' transport managers is a maximum. Where concern arises about the 'internal' or 'external' status of a transport manager it will remain for TCs to decide what the practical limits are for individual transport managers, taking into account factors they feel are relevant.

The 4/50 limit expressed in the regulation for 'external' transport managers does not apply at all to 'internal' transport managers. Therefore the arrangements for internal TMs will not change.

The Department sees no reason why an agreed status (internal or external) between operators and transport managers would not be compliant with the Regulation providing 'effective and continuous control' is being exercised over the transport activities of individual O-licence. The suggestion by the FTA regarding the ability of transport managers to use of modern technology to limit the need to be able to visit all sites within a week is an interesting one. This is a matter of judgment for a Traffic Commissioner based on their knowledge of the specific circumstances of the duties of the transport manager. The comments have been passed on to the Traffic Commissioners for their consideration.

The word 'undertaking' is also used throughout existing EC Directive 96/26/EC. However, it is a legal term that is not immediately understood by the layman

and in effect means operator in the context of the consultation document. This is why the term ‘operator’ or ‘O-licence holder’ is generally used in publications and written guidance.

Outcome:

The responses suggest that the Department’s definitions of ‘internal’ and ‘external’ transport manager, as well as the 4/50 rule are understood. The proposed definition in the consultation will be taken forward in guidance to industry.

Q.2 *Do you have any views on the list of core topics for the ‘external’ transport manager contract at Annex A of Chapter 1?*

Analysis of responses

The nine responses showed support for the suggested list. North East Lincolnshire Council (**NELC**) thought that a robust system of monitoring must be in place, and asked how it would be policed to ensure that a correct level of management is taking place. ACPOS also supported the list and assumed that there was flexibility for individual operators/ managers to include items which are not listed. JEF Care Services (**JEFCS**) thought that the topics assumed a consultant has executive authority and that this may not be the case where the role is advisory and the wording should reflect this situation.

IoTA thought that specifying the number of hours may be detrimental to safe operating as the transport manager should always have full and effective control and always be available. The Chartered Institute of Logistics and Transport (**CILT**) said there should be a minimum time regardless of fleet size – e.g. six hours per week.

The TCs thought it was a positive list and suggested that the operator name as on the licence should also be included. They also said that transport managers needed to be more alert to the actual entity for which they are engaged and whether that has changed. They also suggested the addition of a bullet point in the list of core topics for responsibility for checking drivers’ licences for the correct entitlements for the vehicles to be driven. The STC also suggested including responsibility for compliance with carriage of dangerous goods and marking requirements, and management of up to date legal documentation for vehicles and drivers, including agency drivers.

DfT response

As explained in the consultation document, the Regulation sets out in broad terms what the contract should cover, although in practice, as ACPOS assume,

it is a commercial matter for individual transport managers and operators to determine. The core topics included in the consultation document are therefore only a suggested list, but as the consultation responses suggest it is generally useful. In response to the NELC and IoTA points, where concerns arise it will of course be for a TC to determine whether individual contracts between external transport managers and the operator meet the requirement for "continuous and effective control".

It should be noted that there is no requirement for contracts or formal agreements to be routinely or actively vetted by TCs – and to do so could impose a considerable additional burden on operators, TCs and OTC (Office of the Traffic Commissioners) staff. (OTC staff provide administrative support to the Traffic Commissioners). Operators and TMs should be able to make any contracts available if requested. Confirmation of the existence of a suitable contract should be sufficient in most circumstances.

The Department is working with TCs and the OTC on new O-licence documentation, and this opportunity will be used to alert operators and others to known pitfalls – such as certainty over what entity transport managers are working for.

Outcome:

The Department will ensure guidance will be provided when transport managers and operators are asked to provide any information.

Q.3 *Do you agree that an 'internal' transport manager should have the flexibility to work, on a part-time basis, as an 'external' transport manager?*

Analysis of responses

All nine responses supported this flexibility. NELC said there should be transparency between the transport manager, employer and the company that the transport manager is acting for on an 'external' basis. ACPOS also thought it would tighten up on transport managers, giving them the opportunity to manage their responsibilities more effectively. The Passenger Transport Executive Group (**PTEG**) had no objection to the flexibility for associated companies, but thought that other circumstances should be at the discretion of the TCs. IoTA thought that the 4/50 rule was a positive step in improving standards, there should be a maximum limit in the size of fleet of perhaps 5 authorised vehicles with an external transport manager, and a limit of 30 vehicles for an internal transport manager that wished to act as an internal transport manager for another company.

TCs welcomed and thought there was merit in allowing this flexibility, especially in rural communities where a small businesses may not need a full-time transport manager or may have to hire in someone to cover resignations or sickness – and availability of a nearby internal transport manager with local knowledge and proximity would be a better solution than an unknown external consultant.

The STC also felt that TCs would be able to identify and mitigate any risks when applications are received, so there should be no justification for blanket restrictions that limit options for small businesses to seek external transport managers.

CILT disagreed as they thought it would have the same effect as an internal transport manager, although they did not explain why.

DfT response

Without this flexibility, TMs can only work as either a salaried employee or as a self-employed consultant, they cannot work on a part-time basis as an employee for one operator and as a self-employed consultant for another.

However, adopting the flexibility would allow that arrangement. It is Government policy to minimise the burdens of new Regulation and the responses show support for this flexibility – which may be of particular use to sole traders and small businesses that may not wish their TM to be a salaried employee, or need them working for the business full-time.

The IoTA suggestion for special limits would place additional restrictions on transport managers and operators not required by the new Regulations, as such that would be considered gold plating and is contrary to Government policy.

To answer the CILT point, not all transport managers may wish to be a salaried, part-time employee for more than one operator – they may wish to be employed by their main operator and act as a self-employed consultant on a part-time basis for another, perhaps much smaller, operator. But without making legislative provision for this flexibility, someone acting as a salaried employee for one operator could not act as a self-employed consultant TM for another. This would impose an unnecessary restriction on what is a legitimate arrangement.

Outcome:

To take advantage of the derogation available in the Regulation the Department will make legislative provision to allow an internal transport manager to be able to also work as an external transport manager for third parties.

Q.4 *Are the new arrangements for disqualifying transport managers clear?*

Analysis of responses

Respondents agreed that the arrangements were clear. NELC suggested there may be a need for further clarity on what would lead to a disqualification and the timeframes involved. IoTA thought there should be some requirement that having been disqualified for a period of time, the individual had kept up to date with changes in legislation and practice. FTA would also like to see guidance as to what 'rehabilitation measures' may be deemed appropriate for transport managers who have lost their good repute.

The STC thought that the transport manager should be required to sign a document containing the conditions described in paragraph 19 of Chapter 1 of the consultation document as well as any further or different conditions imposed by the TC when the operator's licence was granted.

DfT response

When considering evidence of non-compliance with the Regulation by a transport manager, the 'competent authority' (the Traffic Commissioners in GB) can determine whether that transport manager should be disqualified on grounds of good repute and specify any appropriate rehabilitation measures that would result in the restoration of their repute. The detail on how disqualification and rehabilitation works in practice will be for the STC to determine.

Outcome:

Guidance will be provided and the Department will make appropriate provision in domestic legislation for the arrangements as described in the consultation document as required by the regulation – i.e:

(a) Allow TCs to take direct regulatory action against transport managers;

(b) TCs can declare a transport manager 'unfit' and specify rehabilitation measures; and

(c) A declaration of unfitness would be entered into the national register and apply across the EU until the ban is lifted.

Q.5 *Do you have any views on the guidance at Annex B of Chapter 1 for deciding whether an individual is an 'internal' or 'external' transport manager?*

Analysis of responses

Nine of the thirteen respondents that commented on this question, including the STC, agreed that the guidance was appropriate. The other four gave a more mixed response. Stagecoach Group PLC (**SC**) and the Confederation of Passenger Transport (**CPT**) felt that the guidance was rather long-winded and not particularly well adapted to the circumstances under which transport managers are usually engaged. FTA had reservations over the use of tax law as the guiding definition of employment status and that the term 'employed' should be enhanced in UK operator licensing legislation with a definition providing clear and straightforward understanding of the term. They also thought that the proposed guidance, which relies on previous case law, could cause unnecessary confusion and simply generate extra work for employment lawyers in the future.

The TCs thought that given the new powers to declare transport managers unfit, they would have an interest in ensuring that their relationship with the operator was on a proper footing and capable of being demonstrated as such. They also pointed out that there are many operators where the relationship between operator and transport manager is familial – especially in small family businesses – which may not involve a PAYE arrangement or self-employment. In view of this, they thought that a simpler approach would be for operator and transport manager to declare the status of their relationship. This approach had value because it was open and transparent and TCs could rely on a combination of the statement and the normal day to day sense of employee/ self-employed (consultant). The 'genuine link' in the case of employees needed to be transparent and for self-employed, there must be a contract setting out the duties.

DfT response

The Department believes that it is primarily for the operator and transport manager to determine between them what their relationship is and for this to be clear and transparent. Under the Regulation, this relationship is fundamental to how the O-licensing rules apply to them.

The fact that there is such comprehensive guidance on determining employment status in relation to tax law demonstrates that a legislative definition, as FTA suggest, would very difficult to frame. Such a definition could not aspire to encompass all the possible and potential arrangements and could even inadvertently outlaw individual arrangements that would otherwise be judged as appropriate. This would also 'gold-plate' the Regulation, which is firmly against Government policy.

For the reasons given above there is a need for arrangements to be clear and transparent. The Department does not wish to place an unnecessary burden on the industry or its regulators when considering this issue. Ultimately, if there is a dispute, it may be for a TC to decide whether a transport manager is internal or external and what is an acceptable arrangement in that specific case.

For this reason, and the potential range of legitimate relationships between operator and transport manager, the Department agrees with the TCs suggestion that the operator and transport manager should, when asked to do so by a TC (for instance, as part of an enforcement case), declare the status of their relationship. However, making this a requirement via legislative provision would be 'gold-plating' the Regulation. Therefore, the most appropriate way forward may be a combination of declaration, with the guidelines at Annex B offering further guidance to the TC in the small number of cases where the issue is in doubt.

Outcome:

Self-declaration by operators and transport managers will be adequate and is the lightest regulatory method of implementing the requirement. The STC will provide guidance to industry on what approach TCs should take if there is a dispute.

Q.6 *Are there any other areas or issues where you feel further explanations would be useful?*

Analysis of responses

JEFCS thought that phasing out of grandfather rights would be unacceptable, as such individuals have had to achieve levels of competence in excess of those minimum necessary for a CPC.

KTC Edibles Ltd (**KTC**) thought that restricted licence operators should employ transport managers or that standard and restricted licences should be combined.

The STC thought that 'vehicle' as described in Article 2, paragraph 1 of the Regulation should be defined and that further guidance was needed on the implications for a transport manager who manages other vehicles – e.g. trailers and light goods vehicles – in addition to HGV and PSVs.

The RHA believed that any areas of difficulty could be addressed if or when they emerged.

DfT response

The issue of phasing out grandfather rights is covered in the Department's response to Chapter 3 Question 4. Grandfather rights will not be phased out.

The Regulation applies only to standard (i.e. hire or reward) operators. Applying those rules to restricted licences would impose additional burdens on industry and significantly gold-plate implementation of the Regulation, both of which are against Government policy.

Article 1.4(a) of the Regulation makes clear that it only applies to motor vehicles or combinations of vehicles, the permissible laden mass of which exceeds 3.5 tonnes – this is the same definition as in current legislation.

Outcome:

The Department does not plan to issue any further guidance or explanations in respect of these additional points.

Chapter 2 - Financial Standing

Q.1 *Do you agree that the no further guidance is necessary on completing certified annual accounts?*

Analysis of responses

Nine out of the thirteen responses to this question that expressed a view agreed that no further guidance was necessary. SC said that PLCs are required to present their accounts in particular ways and they would not wish to see a different requirement imposed for these purposes.

Compass Travel (**CT**) said that clarity was needed on whether the accounts should be 'certified' or 'audited' as there is a significant difference. They also pointed out that they presently fall below the official audit threshold, to achieve audit would require extra effort and cost. And that they only represent a snapshot in time – balances could be depleted by short term cash flow issues and this temporary problem could cause the rule to be violated. Annual review would also not establish the ability to meet the financial standing test at all times and CT would need to bolster cash availability if this were the sole criteria – which is not easy to achieve in the present times.

The Confederation of Passenger Transport (CPT) said it was not guidance on completing accounts, but guidance on what those accounts must show that is lacking. In the absence of clear guidance from the Government, they thought this aspect must be covered by guidance from the STC. In practice, they said it is normal for standing to be demonstrated by a combination of positive balances and lines of credit. This option is consistent with the Regulation, in their view, and must be allowed to continue.

FTA called for further guidance for a GB registered fleet as part of a multi-national organisation. It was the case that some of these undertakings would submit accounts at European group level and FTA sought assurances that these would remain acceptable proof of financial standing with no further involvement or intervention required.

TCs said that implementing regulations would need to make clear that at all times an operator must be able to demonstrate that it is able to meet its financial obligations and a check of new operators after the first year of operating would ensure the new entity was not funded simply to get the licence. They also said it is not the norm for small businesses to have certification of their accounts, but if annual accounts are used, they must be certified. They also thought that entity checks would be required as entity abuse is an issue for them. They also said that many accountants and solicitors were unaware of the details of operator licensing and guidance would need to be issued – particularly to point out that operator licences are not transferable and that

accounts must be in the name of the entity holding the operator's licence and with a certificate in the accounts to that effect. The TCs thought that the Statutory Guidance and Directions on financial standing would need to be rewritten to include the options which become available through the Regulation.

The STC thought that the requirement was that wherever annual accounts were to be used to demonstrate financial standing they should be certified by an auditor or another "accredited" person. A "qualified" accountant may not be professionally accredited or may have lost his accreditation for some accounting misdemeanour.

DfT response

The Regulation makes it clear that even when using certified annual accounts, an undertaking shall at all times be able to meet its financial obligations in the course of the annual accounting year. The accounts that are required must be certified by a person accredited to do so. Accredited persons are those meeting the requirements set out in Annex B of the consultation document.

The Regulation also makes clear that the items that should comprise the annual accounts are a balance sheet, profit and loss account and notes on the accounts. The STC has already issued draft Statutory Guidance and Directions on financial standing, which includes advice on the use of annual accounts and how they will be interpreted. However, some of the responses show that there is still some uncertainty about what operators need to submit to meet this requirement. It is also important that there is consistency amongst TCs about how they interpret these accounts.

TCs have already expressed the view that the Statutory Directions and Guidance from the STC would need to be amended to reflect the requirements of the Regulation. The Department believes that this is the best conduit for providing any further clarity on how this financial standing requirement is met.

Outcome:

Given the burden of compliance with the regulation is with the operator, the Department does not believe it is necessary to require operators to provide a TC with copies of annual accounts on an ongoing and continuous basis in all cases. Instead, operators should sign a declaration at licence application stage that they possess the accounts required by a TC that demonstrate the required financial standing - with a commitment to providing the appropriate documentation to a TC, if requested, within a suitable period.

Q.2 *Do you consider that new applicants providing a certified opening balance is a proper demonstration of financial standing for the first year of trading?*

Analysis of responses

The responses showed broad support for this provision. NELC said that there was a need to demonstrate that funds are available at all times and ACPOS assumed that appropriate background checks had or would be completed to establish the integrity of the applicant. First Group (**FG**) welcomed the stated acceptability of the certified accounts of a parent company as being valid to demonstrate the financial standing of a new subsidiary. JEFCS thought that this requirement stood to prohibit an individual entering the profession and that there needed to be consideration of a probationary period. RHA thought that areas of difficulty could be addressed if and when they emerged and that they have an advice service to members who seek assistance in licensing matters.

DfT response

This provision offers the maximum flexibility to operators that cannot, or do not wish to provide proof of financial standing via the other means that are allowed under the Regulation.

To answer the JEFCS point, the Regulation imposes a requirement that financial standing must be maintained at all times and neither member states nor their competent authorities have any power to relax that requirement for a probationary period.

Outcome:

A certified opening balance should be allowed as proof of financial standing upon application, annual accounts, financial guarantee or other documents at the discretion of a TC can be used thereafter. (Further guidance will be provided by OTC to assist applicants).

Q.3 *Do you agree that Traffic Commissioners should allow financial standing to be demonstrated via a financial guarantee? Are there any other forms of guarantee that should be added to the list at Annex A of Chapter 2?*

Analysis of responses

There was broad agreement to adopting the derogation to allow a financial guarantee to act as proof of financial standing. Stagecoach (SC) said that since they were a group operator, they would find it useful to demonstrate financial standing by means of a parent company guarantee. CPT shared that view and

said that the STC should produce guidance on the requirements that parent company guarantee certificates must meet. FTA welcomed the simplification of the financial standing rules and the additional flexibility that the Department is proposing by adopting the financial guarantee mechanism to demonstrate compliance. RHA were already engaging with the STC in terms of details of financial standing assessment.

CT said it should be noted that in response to the present focus on bank balance sheet ratios, overdraft facilities were increasingly being seen as ‘old school’ by banks who prefer to direct customers to other products, particularly Invoice discounting which was expensive and labour intensive. They said that in this climate, the likelihood of CT negotiating a large overdraft for it not to be used for day to day working capital would be remote. If achieved it would come at considerable expense. Similarly, they said invoice discounting was designed to advance cash flow. It was counter to the purpose of the product to require the finance provider to retain funds, and were this to be introduced for CT it would immediately create a cash flow shortfall.

CT also considered that the change in the Regulation would make it virtually impossible for smaller operators to comply. It would increase financial pressure when it was least needed. They also said that it was logical to conclude that availability of working capital was made up of both available funds and available credit; no reason was given for introducing this restriction. Consequently, it was essential that the present arrangement of allowing a combination of both is retained.

TCs thought that Annex A was helpful. They also said the Regulation might suggest that the practice of allowing financial standing to come by way of statutory declaration of the availability of funds held by another was not acceptable to them. However, the use of statutory declarations proves useful to small businesses particularly family concerns. They said that the risk of not allowing their continuation is that banks and other financial institutions may not provide the guarantees needed .They suggested a more permissive approach to the interpretation of the Regulation would assist the sector.

IoTA thought that it was the most suitable method of ensuring that the operator has the required level of finance readily available without having vast sums of money tied up and unavailable for use. At the current time as soon as an operator requires to use any of the money available for the use it is intended they fall below the amount required and the licence should be revoked. An overdraft facility which is not used fulfils the role but it may be better if a bond scheme was set up by the FTA, RHA or CPT in the same way as the Travel Package Regulations use the CPT or ABTA to provide bonds.

DfT response

The responses show that the Department should adopt the provision allowing financial standing to be demonstrated by a financial guarantee. This is in line with Government policy to minimise burdens. The Department agrees with CT that flexibility to allow a combination of certified accounts and a guarantee should be retained. The responses show there was no disagreement with the list at Annex A and the Department shares the TCs desire that the new arrangements should be as flexible as possible and not disadvantage small businesses – especially those where margins are already tight. It is also clear from the responses that the available mechanisms to demonstrate financial standing can change over time, for example in response to changing lending polices of financial institutions (who may, in future, not be willing to provide the guarantees needed at a cost affordable by some operators).

It is primarily for operators to ensure proper financial standing arrangements are in place. When the issue is in doubt, it is the competent authority that must be satisfied that the requirement is being met, and in these cases the Department believes that the TCs are best placed to determine whether the arrangements put in place by individual operators are acceptable.

Outcome:

The Department wishes to adopt the derogation to allow financial standing to be demonstrated by a financial guarantee. (Guidance for industry will be provided by the STC).

Q.4 *Is the guidance clear at Annex B of Chapter 2 on who is properly qualified to certify annual accounts?*

Analysis of responses

The eleven respondents that answered this question all thought the guidance was clear. In particular, the TCs agreed that the list set out those who being themselves members of a regulated profession could be expected to only certify accounts which are accurate.

DfT response

The responses suggest that Annex B of the consultation document provides sufficient advice on who is properly accredited to do so.

Outcome:

Guidance will be provided by the OTC to communicate this information to all stakeholders.

Chapter 3 - Certificates of professional competence, third-party qualifications and grandfather rights

Q.1 *Do you agree that the Department should continue to allow existing third-party qualifications to provide an exemption from the CPC examination?*

Analysis of responses

Ten of the fourteen responses that expressed a view agreed that existing third-party qualifications should continue. JEFCS made the point that individuals may have had to invest both time and money far in excess of CPC requirements to achieve their qualification and that such exemptions should continue until evidence of failure existed. FG also agreed they should continue provided that it can be demonstrated that the content of any qualification or membership was a valid alternative. CILT also agreed, provided regulation and assessment criteria were met.

IoTA saw no reason why a qualification that covers the whole CPC syllabus to a higher level should not be permitted to exempt a person from sitting a lower level of examination in the same subjects. It may require the exempting qualification to be to a Level 4 in order to qualify for the exemption.

Royal Society for the Prevention of Accidents (**RoSPA**) also supported the proposal to allow those with an existing third-party exemption to continue to be able to use it, but not to allow any new third-party exemptions after December 2011 - as the exempting bodies can be fully integrated into the CPC system.

Conversely, NELC thought that all transport managers should possess the same qualification and that there were too many exempting bodies, diluting the requirement for up-to-date knowledge. KTC felt that a five-year refresher course should be standard. RHA thought it was a matter for the TCs, who should be satisfied that the third-party qualifications are an adequate substitute for a CPC examination pass in respect of new entrants.

TCs felt that the Department must provide a clear list of those existing third party qualifications which it regards as valid and providing exemption from the CPC examination.

Skills for Logistics (**SfL**) said they were exploring a new approach to develop the skills of transport managers and improve the training that they receive. They were defining the skills and knowledge needed by staff involved in managing transport fleets – including those staff who require the Transport Manager CPC – with the intention of defining a progression route of training and qualifications

for ‘Fleet Management’ from entry level to senior management. They say this would provide both a route into the Level 3 knowledge needed to achieve the Transport Manager CPC and a professional development route at Level 4 and beyond – giving the opportunity to enhance transport management skills in the sector. They saw the potential for a Fleet Management Apprenticeship, which could specify the Transport Manager CPC exam as a component of the Level 3 Apprenticeship.

DfT response

The responses suggest that those with existing third-party qualifications should continue to be exempted from the CPC examination. This would allow those currently in possession of such a qualification to act as a transport manager without having to obtain any further qualifications. This is in line with the Government’s overall policy to keep regulatory burdens to a minimum.

Outcome:

Those with existing third-party qualifications can continue to be exempt from the CPC examination requirement.

It should be noted that the position on third-party qualifications going forward is changing. The Department is working with current third-party exemption providers and Ofqual to integrate them into the CPC regime. This regime will be in place by 4 December 2011 when the new Regulation applies.

Those who currently hold a third-party exemption can continue to use it as proof of professional competence. Third-party exemption providers who have issued exemptions will be in contact with exemption holders later in 2011 to formalise the exemptions with new certification. After 4 December there will be no new exemptions from the Transport Manager CPC. New Transport Managers will need to pass an accredited CPC examination.

Q.2 *Should the Department continue to offer ‘grandfather rights’ as an exemption from the need for exam qualification?*

Analysis of responses

Ten of the fifteen respondents that expressed a view agreed that the Department should continue to offer grandfather rights as an exemption from the CPC examination. ACPOS said they thought it should continue subject to

the proviso that their previous work history can be verified and the integrity of the operating companies is established. SC thought it would only be relevant to a small number of people and that such people did exist, were working safely as transport managers, and would prefer not to sit a set of exams at this late stage in their working lives. CPT agreed. IoTA said current grandfather rights holders should be strongly encouraged to undertake the discipline of continuous personal professional development. FTA said the very strong view amongst its members that the individuals currently operating under this regime represent the most experienced managers in the industry preventing them from continuing to act in this capacity could represent a form of age discrimination. They also feared that removal could see a number of small owner-operators leave the industry. The TCs also thought it was difficult to see how grandfather rights could be discontinued without discriminating against transport managers purely for reasons of age.

Of those that disagreed, NELC thought that if continuation training were introduced, these holders may not have up to date knowledge due to lack of formal training. PTEG thought it should be progressively phased out. SfL agreed and also said that holders would not be able to demonstrate a commitment to continued professional development.

DfT response

The responses show a clear preference that grandfather rights should continue. Removing grandfather rights would gold-plate the Regulation, which is against government policy.

Outcome:

Those with pre-existing grandfather rights will be able to renew grandfather rights as an exemption to the CPC examination (please see response to question 3 below for more details).

Q.3 *Do you agree with the two tests in paragraph 10 as a means of proving an entitlement to grandfather rights? If not, what alternative tests would you propose and why?*

Analysis of responses

Twelve of the fifteen respondents that expressed a view agreed with the two tests proposed. SC requested that senior managers continuously employed in public transport management for the past ten years, but not necessarily as a transport manager, should be able to retain their CPCs. IoTA thought that the suggested tests represented the absolute minimum requirement, and proof was also required that they have continued to update their knowledge. SfL also

agreed, but thought option two would be more difficult to implement and that a refresher exam or a CPC qualification was the alternative.

Traffic Commissioners thought that the proposal represented a balance of interests.

JEFCS thought that 10-years experience was too long and that 5 years would be more appropriate. FTA thought the tests proposed were too strict and that it should be for the TC to satisfy themselves that the individual was professionally competent and the burden of proof required rather than cementing it in legislation, and that clear and consistent guidance was given. They also thought individuals named on a licence that no longer existed could not meet the test and that it did not take into account those acting as a transport manager but not named as such on the O-licence. CILT thought that assignment based assessment could be a fairer system for candidates.

DfT response

The responses show support for the proposed tests. However, the Department agrees with the FTA that the requirement should be least burdensome as possible. An exhaustive examination of all existing grandfather rights holders would also be extremely burdensome on TCs and VOSA, given that there are around fifteen thousand grandfather rights holders currently listed on O-licences. Transport Managers who have grandfather rights have had the rights since the 1970s, well before the requirement of the new Regulation. The regulation requires that they should have worked as a transport manager for ten years between 4 December 1999 and 4 December 2009. Therefore if a TM with grandfather rights appears on a licence now with repute intact it is reasonable to believe they comply with the date requirements of the Regulation.

Outcome:

Considering the practicalities and the desire to minimise burdens on transport managers, the process for renewal of grandfather rights will be as follows:

Transport managers who are currently listed on an O-licence as meeting the professional competence requirement through grandfather rights will maintain those grandfather rights and be issued with new certification automatically. This should allow those currently working to continue to do so without issue.

However, there will be a small number of existing grandfather rights holders who will wish to maintain those rights under the Regulation but who are not currently on an operator's licence. This will be possible for

many grandfather rights holders who are fulfilling the TM role in operators with Restricted licenses now or have worked in the role in recent years, therefore an application process will be developed that will allow the Department to make a determination for rights holders (the process for this will be advised by the Department in October 2011)

Q.4 *Do you agree that the 'window' to claim grandfather rights should not extend beyond December 2013? If not, what date would you propose and why?*

Analysis of responses

Ten of the twelve responses to this question agreed. RoSPA said that after this date it is likely that applicants knowledge will not be up to date, and so other evidence of professional competence (by examination) was necessary.

NELC thought that the deadline should be brought forward to December 2012 to ensure that by 2013 (when driver CPC is in force), that suitably qualified transport managers were in force. JEFCS said that unless there is evidence that those claiming grandfather rights are incompetent why should there be any time limit other than bureaucratic tidiness. They also said in their response to another question that the phasing out of grandfather rights should be unacceptable as such individuals have had to achieve levels of competence in excess of those minimum necessary for a CPC.

DfT response

The responses show support for the proposed deadline. However, we agree with RoSPA that up-to-date knowledge is the issue. In answer to the point made by JEFCS, it is difficult to see how an individual applying for grandfather rights (because presumably, they wish to act as a transport manager on an O-licence and haven't done so recently) after the end of 2013 can be expected to meet the requirements to have current knowledge because they would not have acted as a transport manager on an O-licence for at least two years. The Department does not believe it is apropriate to simply 'rubber stamp' these applications on an open ended basis and rely on enforcement to identify incompetence.

Outcome:

The Department will implement the cut-off date of December 2013 for any renewed applications for grandfather rights for use on a hire or reward O-licence where the requirements of the Regulation apply. The Department will handle applications and will decide who will be given renewed grandfather rights, with appeals determined by a Traffic Commissioner.

Q.5 *Which of the two options in paragraph 14 of Chapter 3 would you prefer for transport managers providing proof to a prospective employer that they have grandfather rights?*

Analysis of responses

There were fourteen responses to this question. Three were in favour of option (a) and eight – including all the five industry respondents - favoured option (b). IoTA and CILT thought that both options should be adopted.

DfT response

The Department believes that either option would be workable, although option (a) would have been more bureaucratic and had the potential to be more resource intensive both for operators and the TCs. The responses show a clear preference for option (b).

Outcome:

In line with option (b), the Department will issue each qualifying transport manager with a new 'acquired rights (previously known as grandfather rights)' certificate. In addition, OTC will keep a master list of rights holders.

Q.6 *Do you agree that the additional derogations listed in paragraph 17 should not be pursued?*

Analysis of responses

There were fourteen responses to this question. Seven agreed that the provisions should not be pursued. Of the others:

FB and IoTA thought that CPC training bodies should be regulated.

NELC, FB, ACPOS, IoTA and RoSPA supported CPC retraining.

FB, IoTA, TCs and RoSPA supported allowing TCs to require CPC re-sits.

DfT response

All of the provisions listed go beyond the minimum requirements imposed by the Regulation and add to the burdens on business. It is Government policy not to gold-plate EU Regulations, so responses would need to show strong support for individual measures to justify breaking this rule. Whilst there is some support for

each measure, the Department believes none attracted enough to justify going beyond minimum requirements and adopting these provisions.

Outcome:

To minimise burdens of business and individuals, none of the provisions listed will be adopted.

Chapter 4 - Establishment and other issues

Q.1 *Are there any other details that operators would wish to provide, as an alternative to operating centre or correspondence address?*

Analysis of responses

Of the twelve responses to this question, seven expressed no preference for other details. ACPOS said that precise, traceable details should be provided for enforcement purposes. IoTA said that the address where all operational records are kept should be identified. CILT thought that head office or home address should be added.

TCs said it was essential that they and enforcement agencies know where an operator was operating from and where the business control lies. The address of all operating centres must be made known and also the correspondence address.

DfT response

The Department agrees with the TCs that it is essential that they and enforcement agencies are aware of the location of all operating centres and where, in practice, the business operated under the O-licence is run from. The responses suggest that requiring all operating centre addresses and a correspondence address is sufficient – the latter is flexible enough to cater for operators that may have a head office or a single trader using their home address. The Department does not consider that a separate address is needed for operational records. Larger operators may need to supply a number of addresses to meet such a requirement, which would be confusing for enforcement agencies, and smaller operators are likely to keep records at the correspondence address anyway.

Outcome:

To maintain maximum flexibility the Department will implement the proposal in the consultation document that operators should be asked to supply a correspondence address and the address(es) of their operating centre(s) if different.

Q.2 *Does the abolition of the use of PO Box addresses and third-party administrators to prove establishment cause specific problems? How might they be resolved?*

Analysis of responses

There were thirteen responses to this question. Ten said that abolition would not clause problems. NELC said that all correspondence addresses should be the same as the registered and nominated operating centre to alleviate the possibility of fraudulent business addresses and business practices. They also said that greater control and monitoring of the correspondence and operating addresses should be introduced. ACPOS said that removal of PO addresses should make it easier to trace O-licence holders or their transport managers, who might otherwise 'hide' behind the veil of a PO Box address, making them difficult to trace. TCs said it was essential that they and the enforcement agencies know where an operator is operating from and where the business control lies. PO Boxes were not acceptable.

FG thought that flexibility should be retained provided that appropriate contact details are always provided for sites holding documentation and sites used for operations. They also said that provided that operating centres are correctly defined and can be located, it seemed unnecessary to refuse to accept PO Box numbers.

FTA disagreed with the removal of PO Boxes as it was already a practice frowned upon by TCs although it was allowed for the convenience of administration when the TCs were satisfied that an undertaking’s establishment is clear and it is not an attempt to evade enforcement. They said it was also demonstrated in the specific example of undertakings that worked in transport related to vivisection, who may be targeted by animal rights groups - so there is a demonstrable need to protect their information in such circumstances. They also suggested that the Regulation does not expressly require the abandonment of PO Boxes so the Department should not gold-plate the Regulation when the existing GB system is already addressing the problem of ‘brass plate’ establishments.

DfT response

The majority of responses saw no difficulty with these proposals. It is the view of the Department that the use of PO Box addresses is not compliant with the requirement in the Regulation, and agrees with the TCs that it is important to know where business control lies. We would of course expect the TCs and any operator with legitimate reasons to obscure their identity to reach sensible solutions between them that would not put individuals or companies at risk. Only 30 operators currently use PO Box addresses.

Outcome:

The use of PO Box addresses and third-party administrators will be abolished. The OTC will be contacting all operators who fall into this

category with advice on what operators will need to do to ensure ongoing compliance with the new Regulation.

Q.3 *Is there any additional documentation that operators should be required to be kept at their specified premises? Like vehicle test certificates and registration documents, TM CPCs, driver licences, maintenance records, safety inspection programme, copies of prohibitions, lists of directors, driver rosters, driver defect reports, etc*

Analysis of responses

There were fifteen responses to this question. JEFCS said that provided the address at which records are maintained is clear that should be all that was required. PTEG's concern was to ensure that appropriate documents can be produced quickly on demand but not extend this to stipulating which premises documents should be kept at. SC kept documents at a number of different premises. FG believed that there should be an obligation on operators to identify what documentation is held at which address. IoTA understood that the majority of the specified documents were already required to be kept at the registered premises and that if it requires legislation to make this legally enforceable then they agreed. CPT said that the Regulation defined the core business documents which undertakings must keep on their premises, and they would not like the UK to make additional stipulations because it would be unhelpful to have restrictions on where non-core records should be kept, particularly with multi-site licence holders. They also said that VOSA and the police already have adequate powers to require the production of relevant documents. ACPOS suggested that all documentation pertaining to a particular company should be retained at a single point to assist enforcement. NELC said documentation should be kept at the operating centre and include all vehicle, driver, compliance and training documentation, to allow greater transparency.

FTA said an over-prescriptive list of documents to be 'kept at' premises did not keep pace with the modern information age. The advent of the digital tachograph had meant that data is stored off-site although readily available for control purposes. They suggested that the phrase 'accessible at' would better suit the requirements of the Regulation and that HR documents, accounting documents and vehicle records would not always be kept at the same location. RHA said that documents relevant to O-licence undertakings and repute should be readily available for inspection and that responsible managers should know where they are.

The STC thought that agency driver information - e.g. on previous driving times, driver offences/fixed penalties/ penalty points should be provided. And for PSVs, incident information that put passenger safety at risk (as required by GB

law) and potentially a copy of operator's licence and any signed undertakings/conditions.

TCs thought it was essential that the representatives of the enforcement agencies do not encounter difficulty in examining business records relevant to the operations. These should be available either at the operating centre or at an identified location within the area for which the licence is issued.

DfT response

It is Government policy not to gold plate the regulation by imposing requirements that go beyond what it stipulates. The current arrangements for access to documentation are workable in practice and the abolition of PO Box addresses and third-party administrators will satisfy the establishment requirements of the Regulation. Therefore, the Department could only consider imposing additional documentation requirements if the responses gave a clear indication that such measures were necessary.

The Department recognises that now and in the future more information is likely to be held digitally, not in paper form. Overall, enforcement authorities gaining quick and comprehensive access to required information is generally more important than knowing the precise location where it is stored. In view of this and the above, we believe consideration needs to be given to adjusting the requirements about the storage of documentation at specific premises with a view to taking a more flexible approach.

Outcome:

To minimise the burden on businesses the requirements about document storage will not be extended and the Traffic Commissioners will be asked by the Department to consider ways to revise the requirements with a view to reducing burdens on business.

Q.4 *Does the requirement to provide proof of possession of at least one vehicle cause problems? How might this be addressed?*

Analysis of responses

Thirteen responded to this question with only five foreseeing no problems with this requirement.

JEFCS thought it would be problematic for someone entering the profession and prove the establishment of viable customer business contracts. SC pointed out that not all their O-licences were currently active in terms of having service registrations and vehicles. FG said there was a need to avoid undue

administrative burdens and the potential for operators to potentially inadvertently break the law. New subsidiaries may be set up to facilitate new business ventures and, as such, may not operate any vehicles. So provided that it was sufficient for any O-Licence to hold one nominal vehicle, which may not be in use, and may be an asset owned by a parent or associate company, but hired to the new O Licence holder, then that should be acceptable.

CPT thought the requirement created an additional layer of complexity for those who used fleets of vehicles flexibly between different legal entities. However, they also thought that the requirement that each licensed undertaking must (once its licence is granted) own, hire or lease a vehicle appeared to be unavoidable.

FTA said that it would cause problems for empty o-licence holders who usually work in seasonal, agricultural business and too prescriptive for those maintaining an O-licence to cover periods of unusually high business activity. They also said that it runs contrary to current VOSA advice not to commit to a vehicle purchase or hire agreement until the licence has been granted. It would be useful if the Department works closely with VOSA to investigate means of retaining this flexibility.

TCs suggested another way of interpreting the Article would be for vehicle specification to follow on from authorisation, so nothing could be done on the licence with the authorisation until at least one vehicle is on that licence. This would fulfil the purpose of letting the enforcement agencies of the Member States know or have a means of establishing which entity is operating the vehicle. They took the view that without that provision much of the Regulation became empty.

Some respondents also pointed out that it may be difficult for applicants to obtain vehicles either before, or shortly after, an O-licence is granted.

DfT response

The requirement in the Regulation is that the O-licence holder must have at its disposal one or more vehicles. In its least burdensome sense, this means there must be a formal arrangement for access to at least one vehicle. Such arrangements could be seasonal – to cover agricultural activity – or be activated at short notice, in response to need or demand. It could also be an arrangement between one subsidiary of a company and another, or between co-operating companies. So there is considerable flexibility for arrangements to be tailored to the needs of individual licence holders.

The regulation does not require access arrangements to be in place before the O-licence is granted. It is also not proposed that this requirement is tested at

time of licence application, so TCs are only likely to do so where they thought the requirement was not or would not be met.

What is not permitted under the regulation is granting an O-licence where no formal arrangements are to be put in place once it has been granted for access to any vehicles at any time. Whilst the TC idea of vehicle registration is an interesting one, it would bring an end to the 'margin concession' for goods vehicles. This is not required by the regulation – where vehicle specification in the national register is not mandatory. So activating such a provision would amount to gold-plating.

However, it is clear from the responses that clarification is needed on exactly what types of arrangement are permissible for an O-licence to be obtained and retained. The Department considers it is not appropriate to set these out in legislation, as they may not cover all the permissible arrangements operators may wish to adopt and would not be easy to change over time. These matters are therefore best addressed through Traffic Commissioner guidance.

Outcome:

Having access to a vehicle will be a minimum requirement as explicitly required by the Regulation. If requested by a TC an operator will need to prove that there is a formal arrangement for at least one vehicle to be at the disposal of the operator. The TC has a discretion to allow a period of grace of up to 6 months for the operator to demonstrate compliance. The STC will provide guidance for operators so there is clarity about what is acceptable.

Q.5 *Do you agree that undertakings involved in road passenger transport services exclusively for non-commercial purposes or which have a main occupation other than that of road transport operator should remain outside the scope of the Regulation? If not, why?*

Analysis of responses

Responses to this question were mixed. Out of eleven responses, six disagreed with the suggestion that non-commercial passenger services should remain outside the scope of the Regulation, whilst five agreed.

PTEG stated that this regulation should apply to all commercial road transport operations, irrespective of whether this is the main occupation of the operator. FG went further by suggesting that equality on issues such as safety, regulation of driving, vehicle maintenance and repute/fitness was essential, given the opportunities now available for Community Transport operators to provide local bus services, potentially in competition with "mainstream" operators.

CPT, Stagecoach and IoTA all agreed there should be no compromises on safety, simply because of the status of the operator. In addition, CPT and Stagecoach also suggested that proper checks be put in place to ensure that any restricted licence holders derive the majority of their income from a field of activity other than road transport and that permit operators do not ever operate for profit.

On the other hand, RoSPA agreed that the new Regulation should not be extended to non-commercial operators as they are already covered by other domestic legislation, such as the Section 19 Permits system. CILT UK also agreed with this approach and proposed that all non-commercial services nominate a specific individual with responsibility for operations.

DfT response

There are clearly differing views on this issue. Currently, the regulation would not apply to any undertakings engaged in passenger carrying services exclusively for non-commercial purposes or for those which have a main occupation other than passenger transport operator. PSV restricted licence holders and community transport operators, operating exclusively for non-commercial purposes are outside the scope of the regulation.

We have noted the comments by a number of organisations who argue that the regulation should apply to all operators and cite concerns over safety standards for non regulated services. However, we do not intend to extend the scope of the Regulation as this approach is consistent with the Government's aim of maintaining lesser administrative and cost burdens for charity and voluntary groups.

Outcome:

Passenger carrying services exclusively for non-commercial purposes or which have a main occupation other than that of road transport operator will remain outside the scope of EU operator licensing requirements.

Q.6 *Do you agree that the maximum fine for operating a PSV without a valid O-licence should be increased from £2,500 to £5,000?*

Analysis of responses

There were eleven responses to this question and nine agreed with the proposal.

The IoTA agreed that the current fine of £2,500 was not sufficient to deter non-compliance and that a custodial sentence should also be considered. ACPOS and RoSPA suggested that penalties for operating without a licence should reflect the greater potential safety implications for PSVs due to passenger levels. Both believed that the fines should now be the same for passenger vehicle operators and goods vehicle operators and that this parity should increase the deterrent on illegal operations.

CILT also supported this proposal on the grounds that any PSV Operator without a valid licence should pay the same penalty as any other operator who is required to carry one.

NELC disagreed with the proposal, stating that the proposed increase was not sufficient to discourage passenger operators from non-compliance and that the fine should instead be increased to £20,000. This would be seen as a serious deterrent, rather than an inconvenience.

DfT response

The responses show agreement with this proposal. There is clearly no justification for the fine for PSVs being 50% of a similar fine for operating a goods vehicle as these offences are equally serious and pose very serious road safety implications. The Department believes that such an increase is justified to bring the PSV fine in line with that for goods vehicles and anticipate that the additional deterrent effect of increasing the fine will help further to minimise illegal operation.

We do not support the view that this offence should carry a penalty of more than £5,000 (the maximum UK Level 5 fine) or a custodial sentence.

Outcome:

The maximum fine for PSV vehicle operators operating without an O-licence shall become £5,000, bringing it into line with the maximum fine for goods operators committing the same offense.

Q.7 *Should the maximum fine for PSV and goods vehicle operators not declaring a notifiable conviction be the same as for operating without an O-licence?*

Analysis of responses

There were ten responses to this question and nine agreed with the proposal. ACPOS said that failure to disclose a conviction should be treated equally as this would provide consistency between the different vehicle types. RoSPA

believed that the fines should be the same for goods vehicle operators and passenger vehicle operators, and increasing the level of the fine for both will act as a deterrent and encourage all operators to ensure they comply with the rules on notifying convictions to the TCs.

Only IoTA thought that there should be a sliding scale of fines depending on the convictions level of seriousness.

DfT response

The responses show agreement with this proposal. Operating without an O-licence is a very serious offence as the operator will not be compliant with a range of requirements whose objective is proper road safety. A notifiable conviction may render an individual operator unfit to hold a licence, which in practice means that not declaring such convictions could have the same practical effect as operating without an O-licence. A lower fine also encourages an operator to hide relevant convictions, because the potential penalty for doing so is not a sufficient disincentive. The level of fine defined here is a maximum, so individual fines imposed could still match the level of seriousness, as IoTA suggest.

Outcome:

The maximum fine for PSV and goods vehicle operators not declaring a notifiable conviction will be made the same as for operating without an O-licence.

Chapter 5 - National registers

Q.1 *Do you agree that until 31 December 2015 we should only include the most serious infringements as part of the national register requirement?*

Analysis of responses

There were fourteen responses to this question and nine agreed that only the most serious infringements should be included.

SC and CPT said it would reduce the risk of disproportionate and arbitrary action in other member states who would have access to the Register. IoTA thought that this information should be available to TCs but until 2015 should not be available in the public domain. TCs said that the work to create and populate these would be extensive and whilst they felt it would be good to be able to tell their colleagues across Europe of miscreant operators, the practicalities meant they agreed with the proposed policy. RHA felt that we should take account of practice elsewhere in the EU. RoSPA accepted that for practical reasons the inclusion of some serious offences needed to be delayed. CILT also said that if any infringement was of a level which made it significant then it should be recorded on the register.

NELC thought that all infringements, both minor and major should be recorded and retained as soon as is practicable. PTEG also felt that it is desirable to achieve this at a much earlier date. ACPOS said that the offences captured by this process did appear to be of a more serious nature and that it was right that they should be prioritised. However, other offences which might be perceived as being less serious should be actively considered prior to this date. They suggested that there may be circumstances where a number of such offences are being continually committed by companies and when looked at in isolation appear to be less significant, but when viewed collectively might indicate a course of conduct which is not appropriate. FTA also urged the Department not to wait for the full three year period to expire before requiring such data is kept and to press for full implementation of the Regulation as quickly as possible.

DfT response

It is Government policy not to gold plate the Regulation by going beyond its minimum requirements. Given the responses above, the Department does not feel that there is justification to implement this requirement early or to extend the list of infringments covered.

Outcome:

The national register will only be required to include the most serious infringements until 31 December 2015.

Q.2 *Do you have any comments on our interpretation of the data required to be held on the UK national register, as set out in the Annex to that chapter?*
Analysis of responses

Thirteen responded to this question with ten not offering any comments.

SC said the approach appears to allow for only one transport manager in the Register per undertaking and that they often had more than one - an individual responsible for the drivers and operations and a second individual, responsible for the vehicles and their roadworthiness. CPT agreed.

TCs said that the issue of name needs to be raised. Name changing was a legitimate part of a natural person's life and a legitimate part of commerce. However there was a down side when it came to identifying persons accurately and this came back to the issue of identifying with which entity one was dealing. So former names must be included in the register and there was merit in including trading names for often it is the trading name by which an entity is only known in any public (non legal use) sense.

DfT response

The national register will contain the specified details of all transport managers named on individual O-licences.

The fields contained in the register are specified by the European Commission and the Department, or any other member state, cannot change or add to them. However, there is nothing to prevent individual member states from separately holding additional information about its domestic operators – so the Department has freedom to hold trading names and former names in a separate database. This should not be an issue for foreign vehicles operated in the UK, where operator identification would always be through the details on the community licence.

Outcome:

The Department will implement the table of data as set out in the consultation document.

Draft impact assessment

(This was Annex 3 in the consultation)

Do you agree that the draft impact assessment accurately estimates expected costs and benefits from introducing these regulatory changes?

Analysis of responses

There were nine responses to this question and eight agreed that the impact assessment was accurate. FG thought that although it was very difficult for them to determine the accuracy of this data (especially those relating to HGVs), the overall approach appeared reasonable. CPT thought that it made a good attempt at calculating costs, although the potential benefits were rather nebulous and would depend, partly, on other member states implementing the Regulation conscientiously. The benefits of fair competition were more likely to be noticeable if the Government put in place checks on restricted and permit operations.

JEFCS thought that the proposals were set too high for those wishing to enter the road transport profession, have insufficient flexibility and are inclined to be bureaucratic.

DfT response

The responses show support for the impact assessment. It seems that the JEFCS response to this question concerns the requirements of the Regulation itself rather than the content of the impact assessment.

Outcome:

The Department will continue to use the impact assessment.

General comments

Comment 1:

FTA and TCs pointed out that there is currently no provision for a transport manager to appeal against a decision against their repute without the involvement of the operator – which seems a significant oversight.

DfT response

The Department agrees and will be changing domestic legislation to provide transport managers with a separate appeal process to the Upper Tribunal that does not require involvement of the operator.

Comment 2

TCs and the Information Commissioner's Office pointed out the importance of ensuring that data is handled properly and in accordance with the requirements of the Data Protection Act 1998 with the proper establishment of a data controller. TCs also said that it is important that robust systems were in place to ensure that data capture is accurate and remained up to date.

DfT response

It is a matter for all parties where data protection provisions and legislation applies to ensure that they comply with the law.

Comment 3:

FTA saw nor reason why who owns goods on the back of a vehicle should determine if a transport manager is necessary. They expressed their belief that the provision of a professionally competent transport manager should be extended to restricted (i.e own account) operator licences.

The Farmers Union of Wales responded saying that restricted licences (not subject to the Regulation) should continue as they are now.

DfT response

The EU Regulation only applies to hire or reward operators so extending the professional competence requirement of the Regulation to non-hire or reward (Restricted) operators would gold plating and is not be in line with Government policy.

Other related matters raised

A number of questions have been raised informally regarding vehicle exemptions.

Taking vehicles to annual test

There is an existing exemption from operator licensing (exemption 29 of Schedule 3 of the Goods Vehicles (Licensing of Operators) Regulations 1995) for taking goods vehicles for test, but it does not reflect the policy intention, because:

a) It only covers the standard type of vehicle test, not the more rigorous vehicle test which almost all goods vehicle are required to do;

b) It does not cover all trailers;

c) It may not cover bringing vehicles to the private designated premises which VOSA are increasingly using for goods vehicle testing.

VOSA have been applying the exemption as if it applied to all tests, trailers and centres, by not prosecuting vehicles being taken to test without an operator's licence.

DfT have received representations from industry, who agree with this pragmatic approach but wish the legislation to be made clearer.

Ministers have indicated that they do not wish to undertake a general review of exemptions and we are not proposing to consider this exemption in isolation at this time.

Trainers using loaded vehicles

An EU Directive (2008/65) on driver training includes a requirement that Heavy Goods Vehicles (HGVs) used for training must meet a minimum 'real weight' requirement on the day they present for test – known as Real Total Mass (RTM). This could involve a load being carried on the vehicle to meet the weight requirement. Employers have frequently complained that drivers need further training in laden vehicles once they have passed their test.

As vehicles currently used for driver training and testing purposes do not carry goods or burden they are outside the scope of operator licensing. However, in order to meet the RTM requirements, some test vehicles would have to carry a 'dummy' load or ballast. As a consequence of this, the users of the vehicles (i.e. the training organisations) are likely to come within scope of operator. The

Driving Standards Agency has held a mini-consultation and the new regulations will be in force prior to December.

Abolition of the small trailer exemption

Paragraph 3 of Schedule 1 of the Goods Vehicle (Licensing of Operators) Act 1995 exempts from operator licensing a ‘small goods vehicle’ forming part of a vehicle combination (not being an articulated combination) where all the vehicles comprising the combination excluding any ‘small trailer’ have a plated weight not exceeding 3.5 tonnes.

A small trailer is defined under the Act as a trailer with an unladen weight not exceeding 1020kg. This trailer does not need to be included when calculating the 3.5 tonne limit.

However, under the Regulation all the vehicle combination (including any trailer) operating for hire or reward must be included when calculating the weight limit, so the small trailer exemption will be abolished for hire or reward operations from 4 December 2011. However, the small trailer exemption under paragraph 3 of schedule 1 of the Goods Vehicle (Licensing of Operators) Act 1995 will remain in place for operators carrying goods other than for hire or reward.

Annex A - List of respondents

Association of Chief Police Officers in Scotland

Chartered Institute of Logistics and Transport

Compass Travel

Confederation of Passenger Transport

Friendberry Ltd

FirstGroup PLC

Freight Transport Association

Farmers Union of Wales

Information Commissioner's Office

Institute of Transport Administration

JEF Care Services

KTC Edibles Ltd

North East Lincolnshire Council

Passenger Transport Executive Group

Road Haulage Association

Royal Society for the Prevention of Accidents

The Scottish Environmental Protection Agency

Stagecoach Group PLC

Skills for Logistics

Senior Traffic Commissioner

Traffic Commissioners