



# SENIOR TRAFFIC COMMISSIONER

## Statutory Document No. 2

### FINANCE

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

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Senior Traffic Commissioner

# GUIDANCE

1. The Senior Traffic Commissioner for Great Britain issues the following Guidance under section 4C(1) of the Public Passenger Vehicles Act 1981 (as amended) to provide information as to the way in which the Senior Traffic Commissioner believes that traffic commissioners should interpret the law in relation to the requirements for financial standing.

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

2. Applicants for a standard licence must be of the appropriate financial standing, as required by section 13A(2)(c). Traffic commissioners must revoke a standard licence if it appears that the licence holder no longer satisfies the requirement to be of the appropriate financial standing. However Article 13(1) of Regulation (EC) 1071/2009 allows the holder of a standard licence (but not applicants) to ask the traffic commissioner for a period of time (“period of grace”) to rectify a situation where they cannot establish the required financial standing. The traffic commissioner is not obliged to grant a period of grace. The maximum period allowed under the legislation is 6 months to demonstrate that the requirements will be met *on a permanent basis*.
3. On application the traffic commissioner has a discretion under section 13D to consider whether there are sufficient financial resources for maintaining the authorised vehicles. Traffic commissioners may revoke a restricted licence if they find that there has been a material change in their financial position under section 26(1)(h).

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

4. Applicants for a standard licence must be of the appropriate financial standing as required by section 14ZA(1)(c). Traffic commissioners must revoke a standard licence if it appears that the licence holder no longer satisfies the requirement to be of appropriate financial standing. However Article 13(1) of Regulation (EC) 1071/2009 allows the traffic commissioner to grant a period of grace to holders of standard licences (but not applicants) to rectify a situation where they cannot establish the required financial standing. The traffic commissioner is not obliged to grant a period of grace. The maximum period allowed under the legislation is 6 months to demonstrate that the requirements will be met *on a permanent basis*.
5. Applicants for a restricted licence have to meet the requirement to be of appropriate financial standing as required by section 14ZB(b). Traffic commissioners may revoke a restricted licence if they find that there has been a material change in their financial position (section 17(2) and section 17(3)(d)).

### **Level of Finance Required**

6. The finance required for holders of standard operator licences for both goods and public service vehicles is decided by the Secretary of State for Transport (see below). The levels for restricted licences are set by agreement of the traffic commissioners (see the Statutory Directions attached).

7. Regulation 5 of the Road Transport Operator Regulations 2011 states that a standard licence granted under the 1981 or 1995 Act constitutes an authorisation to pursue the occupation of road passenger or haulage operator for the purposes of Regulation (EC) 1071/2009. Article 7 of Regulation (EC) 1071/2009 states that the rates to be applied shall be those obtained on the first working day of October and published in the Official Journal of the European Union. They shall have effect from 1 January of the following calendar year.
8. The finance required for each authorised vehicle is based on the rate of exchange for the Euro as set each October. The Secretary of State previously concluded that under EU legislation financial standing limits should be the same for both national and international licences as they existed. Operators who apply to add to the number of vehicles on their licences will be checked against the new limits. In the case of Multiple Licence Holders<sup>1</sup> the levels apply to the first vehicle and then the total remaining number of vehicles across the licences.
9. When existing operators are required to demonstrate the availability of finance, such as at the five year review stage or where a traffic commissioner considers an operator's licence for any other reason, the pound sterling rate current at the date when the licences is considered by or on behalf of a traffic commissioner will be applied.
10. Operators are required to notify traffic commissioners of material changes in the availability of finance including the making of formal orders.<sup>2</sup> Traffic commissioners will continue to check standard national and international licence holders regularly and at least every 5 years<sup>3</sup>, so that operators continue to meet the financial standing requirements. This will apply equally to restricted licences.

### **Regulation (EC) 1071/2009**

11. This provision initially allows three ways in which the continuing and mandatory requirements can be satisfied for standard national and international operators:
  - certified annual accounts comprising balance sheet, profit and loss accounts and notes on accounts;
  - certified opening balance for new operators – a properly accredited person can provide a statement of assets and liabilities before they start trading;
  - financial guarantee.

The reference to the acceptability of certified accounts must be read in context whereby it will demonstrate *every year* it has capital and reserves meeting the prescribed sum.

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<sup>1</sup> See Statutory Guidance on Delegations and Multiple Licence Holders

<sup>2</sup> See Statutory Guidance and Statutory Directions on Legal Entities. Section 26(1)(g) of the Goods Vehicles (Licensing of Operators) Act 1995 has been amended to include Debt Relief Orders (DRO). An order lasts for 12 months. In that time creditors named on the order cannot take any action to recover their money without permission from the court. At the end of the period, if circumstances have not changed the person will be freed from the debts that were included in the order. DROs do not involve the courts. They are run by The Insolvency Service in partnership with skilled debt advisers, called approved intermediaries, who will help the person to apply to The Insolvency Service for a DRO. To apply the person must be unable to pay their debts, owe less than £15,000, have very limited total assets, with no more than £50 disposable income a month, be domiciled in England or Wales at some time in the last 3 years and not have been subject to another DRO within the last 6 years or subject to another form of insolvency procedure.

<sup>3</sup> Article 12.2 Regulation (EC) 1071/2009

12. However the United Kingdom (of which Great Britain is the major part) has opted to engage the derogation (at Article 7.2) so as to allow greater flexibility to businesses in the evidence which can be taken into account. The EU Regulations do not contain an exhaustive list. In short this allows traffic commissioners to consider other evidence such as a bank guarantee, an insurance policy (including professional liability insurance) from a financial institution, joint and several guarantees as well as overdraft facilities, credit facilities and invoice finance agreements which they have previously taken into account. Any annual accounts and/or guarantees must be in the name of the relevant entity established in the Member State in which a licence has been applied for and not those of any other entity (established in any other Member State).

## Case Law

13. This Guidance may be subject to decisions of the higher courts and to subsequent legislation. The Senior Traffic Commissioner has extracted the following principles and examples from existing case law and for ease of reference uses financial standing in general terms.<sup>4</sup>
14. Much of the case law predates the commencement of Regulation (EC) 1071/2009, referred to above. The derogation in paragraph 2 of Article 7 of EC Regulation No. 1071/2009 allows Traffic Commissioners to take account of a bank guarantee or insurance provided by a financial institution subject to paragraph 1 of the Article, which requires a standard licence operator to be “at all times” able to meet its financial obligations. Those provisions do not specifically apply to restricted licences.<sup>5</sup> However an applicant or operator can be taken to be aware of the various guidance documents issued on behalf of the Office of the Traffic Commissioner.<sup>6</sup>
15. The case law for standard licences refers to the statutory purpose for the requirement of having available finance namely that the holder of an operator’s licence has the financial resources available to ensure that its vehicles are safe to use on public roads, its passengers (PSV) and other road users are not put at risk by them and that it can compete fairly with other operators, within the constraints of the regulatory regime.<sup>7</sup> The Upper Tribunal has suggested that the discretion to consider the availability of finance to an existing restricted goods licence holder might be limited. Section 13(2) refers to the requirements on application and allows a traffic commissioner, if the commissioner thinks fit, to consider whether the facilities for maintaining the vehicles in a fit and serviceable condition might be prejudiced by a lack of available finance. Those arrangements might be provided in a number of ways and the onus is on the applicant to demonstrate that it meets the requirements. The Upper Tribunal makes clear that the requirements in section 13B and 13C are *continuing requirements throughout the duration of the licence*. Section 13C relates not only to maintenance but to other requirements, for example the need to avoid the overloading of vehicles, which might also impact on road safety. Those requirements continue over the life of the licence and also, perhaps to an equal extent, rely on the resources available to the operator. At application it is open to applicants to demonstrate that section 13D is met by reference to repair and maintenance contracts. The Upper Tribunal has indicated that it is entirely appropriate for a traffic

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<sup>4</sup> 2010/075 VST Building & Maintenance Ltd

<sup>5</sup> 2014/080 Henry & Lynne Stanley

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

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

commissioner to ensure that there is sufficient finance available to pay the contractor's bills as and when they fall.<sup>8</sup> The Senior Traffic Commissioner is satisfied that similar checks may also be made where the maintenance is conducted in-house to ensure that section 13D is met. On the basis of the relevant case law the Senior Traffic Commissioner does not consider it disproportionate to check finance at review or other material times of a restricted goods licence.

16. For standard licences the Upper Tribunal has indicated that whilst money may be ring-fenced for use for maintenance and there may be evidence of maintenance standards that there must be other money available to ensure the remaining aspects of the establishment and proper administration of the business.<sup>9</sup> Financial standing is not a one-off requirement to be met when applying for an operator's licence and then from time to time (e.g. when a continuation fee becomes payable), it is a continuing requirement which must be met throughout the life of the licence.<sup>10</sup> This can be shown by an average balance or through capital and reserves over the period.<sup>11</sup> "Available" is defined as: "capable of being used, at one's disposal, within one's reach, obtainable or easy to get". The leading case<sup>12</sup> poses three questions:
  - how much money can the operator find if the need arises?
  - how quickly can he find it?
  - where will it come from?
17. Financial resources must be at the disposal of or within the reach of the operator so if the operator must first ask someone else to transfer the money then it is not available.<sup>13</sup>
18. An operator may prove the availability of financial resources or capital and reserves if he has money in the bank, which is capable of being used, (i.e. it is not already needed for the payment of debts such as a VAT or tax bill in the ordinary course of the business) or an overdraft at his disposal in the sense that there is a balance undrawn before the limit is reached or he has debts which are obtainable because they are due and likely to be easy to collect or he has assets from which money is easy to get in the sense that the assets are items which can be readily sold without any adverse effect on the ability of the business to generate money, should it be needed. This is not an exhaustive list and a traffic commissioner may be sceptical of credit arrangements in the absence of evidence of ability to service the debt.<sup>14</sup>
19. The Upper Tribunal has held that the availability of finance is not "*black and white*" and that traffic commissioners may also make an assessment of whether the facility, particularly credit cards, will in fact be used and are therefore "*truly available*" to an operator. This is because some facilities charge such a high interest rate they are not compatible with a viable business model and raise the

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<sup>8</sup> 2013/077 Hughes Bros Construction Ltd

<sup>9</sup> 2006/ 111 Kent Coach Travel Ltd, 2012/010 Edward Stuart Nelson t/a ES Nelson Transport, 2016/041 Euomar Ltd

<sup>10</sup> 2013/048 Jane Townsend

<sup>11</sup> 2010/081 Natalie Hunt t/a Wild Stretch Limousines – 'novel' approaches to the calculation of available finance have been rejected by the Upper Tribunal

<sup>12</sup> 1992/D41 J J Adam (Haulage)

<sup>13</sup> LWB Ltd (as above) – the Upper Tribunal indicated that money in an account requiring more than 30 days notice, is not available.

<sup>14</sup> 2010/043 Stephen Mcvinnie

issue of fair competition if an operator was allowed to rely on a large credit facility without building up a working reserve in order to demonstrate financial standing. The Tribunal went on to confirm that traffic commissioners have a “*discretion in relation to accepting or rejecting a particular source of funding or accepting or rejecting the level of reliance upon that source.*”<sup>15</sup>

20. However for an existing licence the requirement cannot be satisfied by evidence which simply provides a ‘snapshot’ of the operator’s financial position. The requirement will not be satisfied by showing that on a particular day or during a particular month enough money was available. Instead what is needed is evidence that the operator is consistently able to have enough money available for the requirement to be satisfied.<sup>16</sup> The Upper Tribunal has approved the practice of requesting statements covering a period of time, namely 3 months for existing licences. Bank statements or equivalent should be up to date when submitted.<sup>17</sup> A traffic commissioner is justified in rejecting summaries or highlights.<sup>18</sup> Whilst the assessment of financial standing has to be made at the time of a hearing the requirement is not limited to that day. Financial resources must be sufficient to ensure the requirement for financial standing with the need for continuing availability.<sup>19</sup> Traffic commissioners accept that the amount of money available may fluctuate and therefore will ask existing operators to provide financial evidence covering a period, normally of 3 months, and then consider the average figure over the whole period. Attempts to persuade the Upper Tribunal to adopt a different approach have failed.<sup>20</sup>
21. Real assets such as property, plant and machinery can be taken into account if their disposal would not reduce the ability of the operator to operate efficiently and profitably. This may mean examining the impact on an operator’s overheads. Operators cannot therefore seek to rely on the value of assets such as vehicles used on the licence, which would amount to a double benefit as they are not disposable assets.<sup>21</sup> Where an operator proposes to rely on this type of asset it may be necessary to have independent evidence of value and the market to answer the above questions. It is for the operator to satisfy the traffic commissioner that the assets belong to it rather than anyone else.<sup>22</sup>
22. It is a fundamental principle of company law that every company is a separate legal entity.<sup>23</sup> If a company is part of a Group the company which holds the licence must not only operate the vehicles but also be able to demonstrate that it is of the appropriate financial standing.<sup>24</sup> The traffic commissioner will have to be satisfied as to the detail of any Group guarantee. The more complicated the company structure and/or financial arrangements the greater the care which will

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<sup>15</sup> 2017/007 Michael Hazell (No.2)

<sup>16</sup> 2012/017 NCF (Leicester) Ltd, Ron McCambridge t/a Functions ‘R’ Us (As above), NT/2016/002 365 NI Group Ltd – if the operator is unable to meet the requirement they must decide whether to ask for a reduction

<sup>17</sup> 2005/413 Red Rose Travel

<sup>18</sup> 2010/058 Asif Mohammed Din t/a Ribble Valley Private Hire

<sup>19</sup> 1998/K37 David Alfred Tricks

<sup>20</sup> 2010/081 Natalie Hunt t/a Wild Stretch Limousines

<sup>21</sup> 2015/022 Euromar Ltd

<sup>22</sup> 2009/385 1<sup>st</sup> 4 Builders Ltd. NCF (Leicester) Ltd (as above) – now summarises the law on the sources of finance, 2016/007 W Meikle t/a MBS Transport

<sup>23</sup> For standard licences Article 7.3 of Regulations (EC) 1071/2009 states that the accounts must be those of the relevant entity established in the Members State in which the authorisation is sought and not another entity.

<sup>24</sup> 2004/373 Rai Transport Ltd

be needed to demonstrate that the applicant company does have the money readily available to meet the requirement to be of appropriate financial standing.<sup>25</sup>

**23.** Traffic commissioners are reminded of the following Upper Tribunal guidance:

*“The operator’s licensing system is built on cooperation and trust. Traffic commissioners must be able to trust operators to cooperate with the licensing regime as established by Parliament. The regime includes provision, where there are appropriate grounds for doing so, to enable the traffic commissioner to explore the question of financial standing. In such circumstances, traffic commissioners are empowered to require operators to establish financial standing by the timely production of original and acceptable documentary evidence. If it appears that the operator is able to snub the reasonable requirements of the traffic commissioner without adverse consequences then, clearly, trust will break down, the authority of the traffic commissioner will be diminished, the public inquiry system and fair competition between operators will be undermined, and others may also feel inclined (or compelled) to flout the regime”.*<sup>26</sup>

**24.** Where a traffic commissioner receives information which brings into question the ability of an existing operator to meet the continuing financial requirement, for instance non-compliance with an undertaking, then the traffic commissioner can ask for evidence that the requirement is still met.<sup>27</sup> The Upper Tribunal has made clear that for an existing licence a closing balance is not sufficient to meet the statutory intention. The requirement will not be satisfied by showing that on a particular day or during a particular month enough money was available.<sup>28</sup> On a finding that the holder of a standard licence does not meet the mandatory requirement it is open to that operator to seek a period of grace to show compliance, failing which, action may be taken against the licence. When a period of grace is granted to an operator, they are responsible for ensuring that they demonstrate the requirement is met prior to the expiry of any period of grace. An operator should therefore actively manage any dates and request an extension, when appropriate, whilst remembering that the grant and any extension is always at the discretion of the traffic commissioner.<sup>29</sup> If a period of grace expires without the mandatory requirement being met then the traffic commissioner is obliged to revoke the operator licence.

**25.** The burden of supplying financial evidence remains upon the operator when requested but there are occasions where, particularly when unrepresented, the traffic commissioner may be required to offer assistance in identifying potential resources which can be relied upon to establish financial standing and to allow a short period of time prior to final determination (e.g. 14 days) to produce further evidence to support financial standing<sup>30</sup> but any approach has to ensure fairness to *all* operators.<sup>31</sup> The Upper Tribunal has indicated that persistent failure to

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<sup>25</sup> 2004/383 Blue Arrow Ltd, in 2010/081 Natalie Hunt t/a Wild Stretch Limousines it was not sufficient for the applicant to produce a letter and section 7 of the Partnership Act 1890 in order to rely on the assets of a partnership in which she had an interest.

<sup>26</sup> per Judge Hinchliffe, DCP in Stay Decision – David John Nutt

<sup>27</sup> 2005/486 McKillop Trucking Ltd, e.g. 2012/026 Ernest Walton t/a Walton Transport

<sup>28</sup> NCF (Leicester) Ltd (as above)

<sup>29</sup> 2018/011 Skyrider Ltd

<sup>30</sup> 2005/306 James Scaffolding Ltd

<sup>31</sup> 2011/022 Andrew John Chatter t/a AJC Vehicle Delivery & Collection, see also Statutory Guidance and Statutory Directions on Legal Entities for reference for instance to voluntary arrangements

comply with financial undertakings, especially following a warning, may provide compelling reasons for loss of repute/fitness.<sup>32</sup> Furthermore where, as a result of there being no evidence that the operator could meet the financial requirements, regulatory action resulting in revocation within one month of the decision has been held to be entirely reasonable.<sup>33</sup> A bare assertion that money is available or that the operator has written to the Office of the Traffic Commissioner will not be sufficient evidence of compliance.<sup>34</sup>

26. Traffic commissioners are entitled to carefully examine the terms of any loan or credit agreement and to establish that it is subject to terms which actually provide for the required sums to be drawn upon. Invoice finance or invoice agreements may be acceptable but only if accompanied by a copy of the signed agreement and a completed schedule signed on behalf of the finance company.<sup>35</sup>

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<sup>32</sup> LWB Ltd (as above)

<sup>33</sup> 2010/362 Flowers 2000 Private Co Ltd t/a Cargo Carriers Transport

<sup>34</sup> 2012/016 JSO Logistics Ltd, 2012/032 TJR Scaffolding Ltd, and 2012/345 M E Kinsley t/a Diamond Fitzgerald Travel

<sup>35</sup> Henry & Lynne Stanley (as above)



## DIRECTIONS

27. The Senior Traffic Commissioner for Great Britain issues the following Directions to traffic commissioners under section 4C(1) of the Public Passenger Vehicles Act 1981 (as amended). These Directions are addressed to the traffic commissioners in respect of the approach to be taken by staff acting on behalf of individual traffic commissioners and dictate the operation of delegated functions in relation to the requirements for financial standing.
28. The Senior Traffic Commissioner has taken account of the financial requirements determined by the Secretary of State and directs the traffic commissioners to adopt the financial levels indicated for restricted licences in the table attached. The Senior Traffic Commissioner also directs that checks should be applied equally to restricted licence holders.
29. It is a condition of the licence that traffic commissioners are informed of any relevant changes within 28 days. This includes any changes to the mandatory requirements for a standard licence as set out in Article 3.
30. Traffic commissioners may call upon the assistance of a financial assessor when considering any complex financial question which appears to arise in relation to the exercise of his functions under the Public Passenger Vehicles Act 1981 or the Goods Vehicles (Licensing of Operators) Act 1995. It is for an individual commissioner to decide when a financial assessor is to be consulted and required to assist at a public inquiry. This must be referred to in the call-up letter and the resource used sparingly.<sup>36</sup>

### Basis of Directions

31. The requirements for an applicant to demonstrate sufficient available finance at application may take effect in slightly different ways. Applicants for a standard goods and any PSV licence must show that they meet the requirement for financial standing. The purpose of this requirement is to ensure that the holder of an operator's licence has the financial resources available so that its vehicles are safe to use on public roads, its passengers (PSV) and other road users are not put at risk by them and that it can compete fairly with other operators, within the constraints of the regulatory regime.
32. Applicants for a restricted goods licence may be asked to show that arrangements for maintenance are not prejudiced by a lack of finance. As this can be key to ensuring safe operation the Senior Traffic Commissioner has indicated that this is not a disproportionate requirement and has directed that there should be checks on the availability of finance unless the applicant can show an alternative arrangement. In the case of an applicant for a restricted licence who intends to hire vehicles the onus will be on the applicant to not only show that there are satisfactory facilities and arrangements for maintaining the vehicles in a fit and serviceable condition but how they intend to ensure this. In assessing whether an applicant or existing restricted licence holder has arrangements to meet the continuing requirements under section 13C, which might also impact on road safety and/or fair competition, the Senior Traffic Commissioner expects there to be a check of the availability of finances as part of ensuring that the arrangements are satisfactory.

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<sup>36</sup> See Statutory Guidance and Statutory Directions on Case Management

- 33.** A finance condition or undertaking taken into account as part of the grant of a licence without a public inquiry will be dealt with by the Central Licensing Office. Any follow up, for instance, within six months of the date of a public inquiry, will be administered by the relevant traffic area office, beyond that staff in the Central Licensing Office will have the lead.

### **Assessing Availability of Finance**

- 34.** Historically commissioners have required the submission of bank statements for a 3 month period when operators and applicants are seeking to establish availability of finance but this approach has only given a historic analysis of the operator's financial position and has been of limited assistance to new applicants who may only be able to establish access to the required finances for a period of 1 month prior to the establishment of the business.
- 35.** The following approach is intended to implement the requirement of Article 7(1) of Regulation (EC) 1071/2009 that operators should meet the financial standing requirement at all times without creating a disproportionate burden on transport businesses. It is also intended to reflect the relevant case law regarding restricted goods licences above, which indicates that the availability of finance is intended to cover emergencies outside some maintenance contracts. It will permit traffic commissioners to undertake a detailed scrutiny where they deem it necessary.
- 36.** Each case must be considered on its individual merits. Much of the information below is already requested from applicants by staff of the Office of the Traffic Commissioner based at the Centralised Licensing Office. Further information, however, may be requested by a traffic commissioner so that he or she may be completely satisfied that the requirements are met in all cases. Applicants for licences and existing operators are advised to comply quickly and accurately with any requests for information from staff acting on behalf of the traffic commissioner.
- 37.** One of the most reliable indications of money being available is cash or a facility being held in a bank account of the licence holder over a period of time. This may be supplemented or substituted by the unused portion of any overdraft facility. Where evidence other than bank account or credit card statements are relied upon this will necessitate referral to the traffic commissioner. Existing licence holders will be expected to show that they have met the continuing duty by producing evidence over a 3 month period. Subject to paragraphs 44 and 54 below traffic commissioners may accept sums made available to the operator, which can be turned into cash fairly quickly (within a month at most) if needed. In those circumstances the terms of the individual investment, policy or bond will need to be checked. A traffic commissioner might also accept a bank guarantee (not a simple letter but a formal business arrangement) or an insurance policy, including a professional liability insurance from a regulated financial institution, upon production of the agreement and terms. The evidence must be capable of addressing the legal test for availability. Availability of finance is a continuing obligation. Consequently it is not disproportionate for traffic commissioners to require bank statements for a period of three months and/or any other financial evidence covering three months to be produced when an operator is called to public inquiry.

38. If it is a new business and thus does not have sufficient statements an opening balance meeting the requirement can be accepted, but the licence must be made subject to a finance review after the grant of the licence in accordance with Annex 5.
39. In all cases of a recent liquidation within the last three years, whilst an applicant might be able to provide evidence which meets the requirements, the report of the liquidator to the creditors must be requested. The contents may also be relevant to the consideration of fitness or repute.<sup>37</sup>
40. Operators have historically been asked at the five-yearly review of their licence (see paragraph 10) to demonstrate that they continue to meet the requirement to be of the appropriate financial standing. They are accordingly sent a copy of Annex 4 for completion and return. Additional information may be requested. To reflect the position that, Regulation (EC) 1071/2009 allows after grant, for the annual submission of certified accounts to demonstrate that the continuing and mandatory requirement for financial standing can be satisfied traffic commissioners will accept the submission of these accounts. This allows for any variations in the coming year to be assessed as against those certified accounts as opposed to supplying additional financial evidence at the point of every application. If the established operator were to be unable to meet the continuing and mandatory requirement it would still be under an obligation to notify the traffic commissioner.
41. Any case in which there is doubt about whether an operator meets the requirements, which cannot be resolved by reference to these directions and annexes, is to be referred to the traffic commissioner.

### **Amounts Required**

42. Regulation 5 of the Road Transport Operator Regulations 2011 makes clear that a standard licence granted under the Public Passenger Vehicles Act 1981 or the Goods Vehicles (Licensing of Operators) Act 1995 constitutes an authorisation to pursue the occupation of road passenger or haulage operator (as applicable) for the purposes of Regulation (EC) 1071/2009. References to national and international standard licences have therefore been removed. The financial limits set by EU Regulation 1071/2009 are 9000 Euros for the first vehicle and 5000 Euros for each subsequent vehicle. For member states not participating in monetary union, the Regulation requires the equivalent in their currencies to be revised every year, using the euro exchange rate published in the *Official Journal of the European Union* on the first working day of October in the previous year.
42. As the EU regulation requires traffic commissioners to use the exchange rate as published on the first working day of the previous October the rates will change, and will come into force on the following 1<sup>st</sup> January :

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<sup>37</sup> See Statutory Guidance and Statutory Directions on Good Repute and Fitness

Rates from 1<sup>st</sup> January 2019:

Licence type		Goods vehicles (GVs)	Public Service Vehicles (PSVs)
Standard	First vehicle	£8,000	£8,000
	Each additional vehicle	£4,450	£4,450
Restricted	First vehicle	£3,100	£3,100
	Each additional vehicle	£1,700	£1,700

Previous rates from 1<sup>st</sup> January 2018:

Licence type		Goods vehicles (GVs)	Public Service Vehicles (PSVs)
Standard	First vehicle	£7,950	£7,950
	Each additional vehicle	£4,400	£4,400
Restricted	First vehicle	£3,100	£3,100
	Each additional vehicle	£1,700	£1,700

**In calculating the sum required by Multiple Licence Holders or applicants, the sum required for the first vehicle should be applied only once across the licences.**

## Determining Factors

### *Names on Financial Statements*

- 43.** The starting point is that all financial documents should be in the same name(s) as the applicant or licence holder.<sup>38</sup> In the case of partnerships or sole traders the financial evidence (see above) may on application, at the traffic commissioner's discretion, be in a different name, but it must be supported by a statutory declaration (see example at Annex 2) signed as at the date of the application by the person(s) holding the money showing that it is available to other person(s). (This could apply, for instance, where a mother wishes to support a son, or if a wife wants a joint account to be available for her husband's business). A statement from a finance house to the effect that "I certify that funds of £XXX are available to Mr X if needed" or the like is not acceptable, because such loans are usually only available at high rates of interest and as such the operator is unlikely to draw them down when his other finances are running short.
- 44.** In the case of a limited company the funds must be held within the company. A limited company protects the liability of its shareholders and is a separate legal entity from its directors. It is subject to statutory requirements regarding its ability to pay its debts. Whilst a statutory declaration is not appropriate for a limited

<sup>38</sup> Article 7.2 Regulation (EC) 1071/2009

company<sup>39</sup> or Limited Liability Partnership an application by a limited company or Limited Liability Partnership might be supported by a Group or cross-company guarantee<sup>40</sup> on application only. This is usually evidenced by a deed which follows and must record a resolution by the Board of Directors of the company offering the guarantee itself. This type of arrangement must be referred to a traffic commissioner to consider the merits and will require evidence of the financial standing of the guarantor.

45. In assessing franchises a decision will depend on the actual relationship between the franchiser and franchisee. The franchise package may include the provision of vehicles, subsequent maintenance, and even the provision of an operating centre. The franchisee may have committed all of his or her available resources to purchase the franchise. Traffic commissioners, however, must still be satisfied that the relevant financial criteria are met and that the vehicles will be properly maintained.
46. In these circumstances the available finance of the franchiser may be of equal or greater relevance than that of the franchisee. Where the franchisee holds a licence the appropriate checks can be made. It is more difficult where he is not, although of course, it is likely that the franchiser will be incorporated and thus have available published accounts. In the case of an applicant the onus is on the applicant to satisfy the traffic commissioner that the financial requirements are met. In the case of an existing licence the operator will be aware of the consequences if the traffic commissioner cannot satisfy him/her self that the requirement is met and is obliged to offer assistance. The initial approach is to consider the terms of the agreement between the parties to ensure that this includes provision for the maintenance of the vehicles etc. The traffic commissioner will also require evidence that the franchisee has sufficient funds to cover any immediate charges or subscription.

#### *The Types of Evidence to Be Taken into Account*

47. Where bank or building society statements are relied upon they should generally be assessed over a period of time (see Annex 5 and below). If an operator holds or is applying for licences in more than one traffic area the financial requirement is to be assessed on each licence but the 'first vehicle' will only be counted once.
48. Where on application (new or variation) and at 5 yearly review, bank or building society accounts are relied upon, original statements must be supplied for the past 28 days, the last balance of which must not be more than 2 months from the date of receipt of the application. Where applications are made digitally, electronic copies of original documents and internet statements can be uploaded with the application, however the traffic commissioner and staff acting on their behalf reserve the right to request originals. The average balance over this period will be calculated, (see Annex 5) and added to any overdraft or credit facility demonstrated by a formal written commitment by the bank, etc. An offer of such a facility will not suffice. If the average balance is negative, this will be subtracted from the overdraft limit to find the available finance. Building society accounts will only be acceptable if funds can be drawn down within 1 month. If more than one

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<sup>39</sup> LWB Ltd (as above)

<sup>40</sup> A cross guarantee will only be accepted between two or more related firms, such as groups of companies or a parent company and subsidiaries and affiliates.

account is offered, the amount available to demonstrate financial standing is the sum of the amounts calculated as above. Unusually large deposits/withdrawals which have influenced the balance might lead to further enquiries and a request for an explanation from the applicant/operator. The traffic commissioner might ultimately decide to discount these deposits/withdrawals from the balance. If there is any doubt as to the source of funds this should be referred to the traffic commissioner.

49. As stated above internet statements can be uploaded with digital applications, however authenticated statements may subsequently be requested. In those circumstances the applicant will need to have them endorsed by the relevant bank. A stamp and signature from the relevant bank or building society will be accepted by traffic commissioners. Similarly where copies have been scanned and sent the traffic commissioners and staff acting on their behalf reserve the right to request the original documents to be sent.
50. Credit card accounts (in the same name as the applicant or licence holder) must also be supported by original documents to show that over the same 28 day period the funds available meet the criteria. As with other forms of financial evidence electronic copies of electronic documents and internet statements can be uploaded with digital applications, however original documents may subsequently be requested for authentication purposes. In the case of internet statements a stamp and signature from the relevant bank or building society will be accepted by traffic commissioners. Where a credit card account is the sole source of evidence to prove the availability of finance traffic commissioners are entitled to ask why there is no other evidence of banking facilities available.
51. If the applicant has a new business and thus does not have statements for the 28 day period, an opening balance meeting the requirement may be accepted, with an explanation regarding the source of funds but it is likely that traffic commissioners will require the operator to submit further financial evidence within a specified period after the date of grant (likely to be 6 to 12 months).
52. Alternatively a working capital loan facility and/or a revolving credit agreement with minimum monthly repayments and/or a formal surety may be accepted as evidence of available finance. The terms of any agreement will need to be considered. In the case of a 12 month period committed working capital loan facility it should be:
  - available up to a maximum required amount to meet legislative requirements;
  - available for multiple drawings in a 12 month period;
  - convert to a 12 month fixed term loan for any amount drawn;
  - be renewable annually by notice from the bank;
  - be available to limited companies; and
  - have no minimum or maximum amount, up to agreed facility limit.

A revolving credit agreement must refer to the revolving credit facility, have an agreed facility (credit) limit and show sufficient amounts to be drawn upon to meet repair and maintenance costs. Invoice Finance or Invoice agreements may also be accepted but only if accompanied by a copy of the signed agreement and a completed schedule signed on behalf of the finance company (Annex 3). Guarantees are to be considered on their merits by traffic commissioners, subject to establishing the financial availability of the guarantor. The derogation in

paragraph 2 of Article 7 of EC Regulation No. 1071/2009 allows traffic commissioners to take account of a bank guarantee or insurance provided by a financial institution subject to paragraph 1 of the Article, which requires a standard licence operator to be “at all times” able to meet its financial obligations. It goes on to refer to an annual audit. These provisions do not specifically apply to restricted licences.

- 53.** The Providers of financial services may need to be licensed. For instance the Consumer Credit Act 1974 requires businesses that offer goods or services on credit or lend money or are involved in activities relating to credit or hire to be licensed. The registration function usually sits with the Financial Conduct Authority whilst the regulation of prudential credit unions sits with the Prudential Regulation Authority<sup>41</sup>. A credit licence is not needed if the business is only planning to accept credit cards issued by other businesses and only deals with limited companies. Owner-driver contracts must be referred to the traffic commissioner for consideration as to whether a section 22 condition should be made. The financial requirement is not reduced in the case of contract or lease hire vehicles whose maintenance is included in the hire charge, since there are often substantial penalty clauses within hire agreements which would have to be met if, for instance, the operator wanted to return the vehicles early upon the loss of a contract. The financial requirement is primarily for the purpose of working capital.
- 54.** The latest annual accounts can also be submitted (to a date not more than 18 months prior to the date of an application only).<sup>42</sup> They will only be accepted as a substitute for bank statements etc. where they have been certified. Generally they will only be audited where the entity is an established and substantial limited company/plc with a turnover of £6.6M<sup>43</sup> (£5.6M for accounting periods prior to 1<sup>st</sup> October 2012), which may be subject to statutory uprating. Subsidiary companies may be exempt from mandatory auditing of accounts if the subsidiary fails to meet all of the specified conditions.<sup>44</sup> The continuing nature of this obligation on standard operators is demonstrated by Article 7.1 of Regulation (EC) 1071/2009, which requires that the undertaking *shall demonstrate on the basis of annual accounts certified by an auditor or duly accredited person that, every year, it has at its disposal capital and reserves to the prescribed sum*. Article 7.2 allows a

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<sup>41</sup> Part of the Bank of England

<sup>42</sup> A new UK-Irish Generally Accepted Accounting Practice prepared by the Charity Commission and the Office of the Scottish Charity Regulator from 1<sup>st</sup> January 2015

<sup>43</sup> The Companies and Limited Liability Partnerships (Accounts and Audit Exemptions and Change of Accounting Framework Regulations 2012)

<sup>44</sup> Conditions:

- (a) the parent undertaking is established under the law of an EEA state;
- (b) company's shareholders have unanimously agreed to dispense with an audit in that financial year;
- (c) the parent has given a statutory guarantee of all the subsidiary's outstanding liabilities at the end of the financial year;
- (d) the subsidiary is included in the consolidated accounts drawn up by the parent undertaking in accordance with Directive 83/349/EEC (the Seventh Company Law Directive);
- (e) use of this exemption must be disclosed in the notes on the consolidated accounts drawn up by the parent;
- (f) following documents must be filed by the subsidiary's directors at Companies House on or before the account date: i) written notice of the agreement in (b); ii) a statement by the parent that it guarantees the subsidiary company under the particular section of the Act; iii) a copy of the consolidated report and accounts referred to in d) and the auditor's report on those accounts;
- (g) the company is not quoted within s385(2) of the Companies Act, i.e. on an official list under the Financial Services and Markets Act 2000, or held by an EEA State, or the Nasdaq;
- (h) it is not an authorised insurance company, a banking company, an e-Money issuer, a MiFID investment firm or a UCITS management company, or carries on insurance market activity; and
- (i) it is not a trade union or an employer's association.

derogation so that other forms of finance check can be undertaken and the Upper Tribunal has warned against reliance on 'snapshots' in that context.

- 55.** On application audited annual accounts in respect of the financial year end, to a date not more than 18 months prior to the date of an application only can be used as a substitute for bank statements and equivalent documents only for established and substantial companies with a turnover of more than £6.6m (subject to statutory uprating). Smaller businesses have historically produced annual accounts as additional evidence to establish financial standing. However under Regulation (EC) 1071/2009 traffic commissioners may accept annual profit and loss accounts and balance sheets or a statement of an opening balance if they are certified by a properly accredited person. Annex 7 sets out those persons whom traffic commissioners will accept as "properly accredited persons". Draft accounts can be very unreliable and should only be accepted pending receipt of signed documents within 2 months confirming no material changes.
- 56.** The financial accounts for all other businesses, whether audited or not, should be examined as additional evidence of financial stability. This will highlight any insolvent trading positions or unpaid taxes such as PAYE/NI/VAT etc (a sign of cash flow problems), which may contradict the position shown by the operator's bank statements.
- 57.** Where any type of accounts are relied upon it is always open to the traffic commissioner to seek a further check of finances either by way of a condition upon grant or an undertaking where it is considered appropriate, for example, where the relevant entity can be linked to previous entities or a previous history of non-compliance.
- 58.** It is open to traffic commissioners to consider financial accounts for all other types of business entities (i.e. not companies) whether audited or not. This might highlight any insolvent trading positions or unpaid taxes such as PAYE/NI/VAT etc. and may indicate cash flow problems. Where accounts contradict the impression given by the bank statements the traffic commissioner might ask for further enquiries to be made. Applicants and operators are to be reminded of the need to reply to these further enquiries in a timely manner.
- 59.** Annex 1 offers a quick reference guide to the starting point for different types of legal entity. It must be read in conjunction with the Directions above.
- 60.** The following are not generally acceptable as evidence and must be referred to a traffic commissioner for consideration:

  - cash is rarely appropriate since it cannot be demonstrated to 'belong' to the applicant but may occasionally be accepted for a limited number of applicants who claim to deal exclusively in cash;
  - bank letters (other than formal overdrafts);
  - children's accounts as the contents cannot be demonstrated to 'belong' to the applicant and may be held in trust for the named child;
  - shares, savings bonds, PEPs/ISAs, savings certificates, insurance policies (see above), unless accompanied by a letter from an accountant/financial advisor certifying the current encashment values (except for shares quoted in the daily press which Office of the Traffic Commissioner staff can easily ascertain), and the notice required to cash them, which must be no more than



1 month. It is noted that banks generally accept no more than 75% of the quoted worth of stocks and shares;

- physical assets such as livestock or perishable goods which might reduce in value quickly will not usually be accepted. Other 'real assets' such as property, plant and machinery can be taken into account if their disposal would not reduce the ability of the operator to operate efficiently and profitably. This may mean examining the impact on an operator's overheads. Where an operator proposes to rely on this type of asset reliable evidence of its value and the market may be required. It is for the operator to satisfy the traffic commissioner as to ownership;
- aged debt registers or records of debts owing to the applicant or operator as these do not demonstrate how quickly the funds might be obtained.

**61.** The requirement is to provide evidence of available capital and reserves. The financial requirement is not reduced in the case of contract or lease hire vehicles whose maintenance is included in the hire charge, since there are often substantial penalty clauses within hire agreements which would have to be met if, for instance, the operator wanted to return the vehicles early upon the loss of a contract.

**62.** If a traffic commissioner decides to consider financial evidence at a hearing or requires it to be assessed at an STL interview then the operator will be required to produce bank or equivalent statements for a period of 3 months, as per Annex 5. The original evidence of available finance can be returned to the operator on the day of the public inquiry after it has been scanned onto the Vehicle Operator Licensing system, to be retained and destroyed in line with the TC data retention policy. This will ensure that relevant evidence is available in the event of an appeal or other challenge.

## **Period of Grace**

**63.** Where a standard licence holder cannot demonstrate financial standing Regulation (EC) 1071/2009 allows but does not require the traffic commissioner to provide a period of time to rectify the situation.<sup>45</sup> The operator may be given a limited time to make written representations before the traffic commissioner decides whether to allow time for rectification and for what period by way of a notice served under the legislation. On receipt of evidence from DVSA, the Courts or other reputable sources that there are outstanding sums owed to a Court, then a request for an explanation and for proof of available finances should be sent to the operator before being submitted to the traffic commissioner. As per the Upper Tribunal: "*In our view, when considering whether or not to grant a period of grace, Traffic Commissioners will need some tangible evidence, beyond mere hope and aspiration, that granting a period of grace will be worthwhile, and that there are reasonable prospects for a good outcome. Some sort of analysis along these lines will be necessary because, amongst other reasons, Traffic Commissioners have to decide how long to grant. Moreover, as with a stay, there is no point in granting a period of grace if the likely effect is just to put off the evil day when regulatory action will have to be taken*".<sup>46</sup>

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<sup>45</sup> See Statutory Guidance and Statutory Directions on Legal Entities, for instance, companies which find themselves in difficulties can seek to avoid insolvency proceedings by entering into a company voluntary arrangement (CVA) with creditors.

<sup>46</sup> 2014/008 Duncan McKee

64. The maximum periods allowed under the legislation are as follows:

Shortcoming		Maximum Period of Grace
Transport Manager	Departure	6 months
	Death or physical incapacity	6 + 3 months
Effective & Stable Establishment		6 months
Financial Standing		6 months to demonstrate that the requirement will be met <i>on a permanent basis</i>

## ANNEX 1 - SOURCES OF FINANCIAL EVIDENCE

<b>Sole Trader and unincorporated entities</b>	
<p>All financial documents should be in the same name as the applicant or licence holder.</p>	<p>The traffic commissioner may allow documents in a different name, but this must be supported by a statutory declaration signed by the person(s) holding the money showing that it is available to other person(s). Evidence of the availability of the funds belonging to the person making the offer must be seen. (This method of financing could apply on application, for instance, where a mother wishes to support a son, or if a wife wants a joint account to be available for her husband's business, but is not generally suitable for larger enterprises.)</p>
<p>Original or certified copies of any bank or building society accounts statements must be supplied for the last 28 days. Electronic copies of original documents and internet statements can be uploaded in the case of digital applications. The average balance will be calculated, and added to any overdraft or credit facility demonstrated by a formal written commitment by the bank, etc.</p>	<p>If it is a new business and does not on application have statements for 28 days, an opening balance which meets the level required may be accepted and should be accompanied by an explanation regarding the source of funds.</p> <p>Traffic commissioners and staff acting on their behalf reserve the right to request the original documents to be sent.</p>
<p>If more than one account is offered, the amount available to demonstrate financial standing is the sum of the amounts calculated as above.</p>	
<p>Invoice finance agreements are acceptable, but only if accompanied by confirmation of available balances not drawn down averaged over a 3 month period. The complete agreement will need to be examined.</p>	
<p>Owner-driver contracts must be referred to the traffic commissioner for consideration as to whether any additional conditions should be applied.</p>	
<p>Annual accounts or a statement of opening balance provided they are certified by a properly accredited person</p>	

**Partnerships (not LLPs)**

All financial documents should be in the same name(s) as one or both of the applicants or licence holders.

The traffic commissioner may allow documents in a different name, but this must be supported by a statutory declaration signed by the person(s) holding the money showing that it is available to other person(s). Evidence of the availability of the funds belonging to the person making the offer must be seen. (This method of financing could apply, for instance on application, where a mother wishes to support a son, or if a wife wants a joint account to be available for her husband's business, but is not generally suitable for larger enterprises.)

Original or certified copies of any bank or building society accounts statements must be supplied on application for the last 28 days. Electronic copies of original documents and internet statements can be uploaded in the case of digital applications. The average balance will be calculated, and added to any overdraft or credit facility demonstrated by a formal written commitment by the bank, etc.

If it is a new business and does not on application have statements for 28 days, an opening balance which meets the level required may be accepted and should be accompanied by an explanation regarding the source of funds.

Traffic commissioners and staff acting on their behalf reserve the right to request the original documents to be sent.

If more than one account is offered, the amount available to demonstrate financial standing is the sum of the amounts calculated as above.

Invoice finance agreements are acceptable, but only if accompanied by confirmation of available balances not drawn down averaged over a 3 month period. The complete agreement will need to be examined.

Annual accounts or a statement of opening balance provided they are certified by a properly accredited person

**Limited companies and Limited Liability Partnerships (LLPs)**

<p>In the case of a limited company the funds must be held within the company.</p>	<p>Group and cross company guarantees must be referred to the traffic commissioner to consider the merits and will require evidence of the financial standing of the guarantor.</p>
<p>Original or certified copies of any bank or building society accounts statements must be supplied for the last 28 days. Electronic copies of original documents and internet statements can be uploaded in the case of digital applications. The average balance will be calculated, and added to any overdraft or credit facility demonstrated by a formal written commitment by the bank, etc.</p>	<p>If it is a new business and does not on application have statements for 28 days, an opening balance which meets the level required may be accepted and should be accompanied by an explanation regarding the source of funds.</p> <p>Accounts shared by two or more companies must be referred to the traffic commissioner.</p> <p>Traffic commissioners and staff acting on their behalf reserve the right to request the original documents to be sent.</p>
<p>If more than one account is offered, the amount available to demonstrate financial standing is the sum of the amounts calculated as above.</p>	
<p>Invoice finance agreements are acceptable, but only if accompanied by confirmation of available balances not drawn down averaged over a 3 month period. The complete agreement will need to be examined.</p>	
<p>Audited annual accounts for operators with a turnover of more than £6.6m (subject to statutory uprating) (in respect of the financial year end, to a date not more than 18 months prior to the date of application) can be used as a substitute for bank statements.</p>	<p>Draft annual accounts to a date not more than 12 months prior to the date of application/licence check may be considered but should be referred to the traffic commissioner who may require further evidence.</p>
<p>Annual accounts or a statement of opening balance provided they are certified by a properly accredited person</p>	

## ANNEX 2 - STATUTORY DECLARATION

Operator..... O Licence Number .....

### **STATUTORY DECLARATION**

I, \_\_\_\_\_, do solemnly and sincerely declare that I have the sum of not less than £ \_\_\_\_\_ readily available and I undertake and confirm that the above named operator may use these funds for the sole purpose of complying with their obligations under the Goods Vehicles (Licensing of Operators) Act 1995 and/or the Public Passenger Vehicles Act 1981.

And I further confirm that I will inform the Traffic Commissioner in the event that my financial assets are no longer to be made available to the operator and I make this declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Signed .....

Name.....

(Block Capitals)

Dated .....

Before me,

Signed ..... (A Solicitor authorised to Administer Oaths)

Name

.....

(Block Capitals)

Name and Address of Solicitor's Firm

.....

Dated .....

**I [the solicitor] confirm that I have explained to [ \_\_\_\_\_ ] the effect of the undertaking and confirmation referred to.**

## ANNEX 3 - FINANCE AGREEMENT AUTHORISATION

Between: Name of operator. Licence Number:

And: Finance Co Ltd

In support of this application for a new operator's licence/variation of the existing operator's licence/check of the operator's licence I request and authorise you to divulge to the Traffic Commissioner of the XXXXXX Traffic Area, the information for the last working day in the previous three months at questions A, B, C and D.

Signed by the operator:

Dated:

Please insert the figures in the following format:

Months	A	B	C	D

Signed for the Finance supplier:

Dated:

Name:

Position:

The questions are as follows;

Column A. The maximum sum available to me/the Company under the Factoring Agreement at the month end.

Column B. The sum to which I/the Company is entitled to draw upon on demand ("X%").

Column C. The sum already advanced

Column D. The balance, which is available but not drawn down (Col. B minus Col. C)

The following example shows how to provide the information, in a case where X% is 75%;

Months	A	B	C	D
April	£100,000	£ 75,000	£ 50,000	£25,000
May	£200,000	£150,000	£110,000	£40,000
June	£ 80,000	£ 60,000	£ 50,000	£10,000

## ANNEX 4 - LICENCE RENEWAL

### DECLARATION FOR FINANCIAL STANDING FOR STANDARD LICENCES & ADEQUATE FINANCIAL RESOURCES FOR RESTRICTED LICENCES

Legislation requires that for the type of licence you hold and the number of authorised vehicles, you will meet the continuing requirement regarding availability of finance provided you can demonstrate available capital and reserves of £....., (being £..... for your first vehicle and £..... for each of your other authorised vehicles). Please show how this requirement was met at [ date ].

1. What is the limit of any loan/overdraft arrangement on your business bank account(s)? **(a)** £
  
2. Either  
 Enter your current account average credit balance over the last 3 months **(b)** £      **or**      Or  
 Enter your current overdrawn average debit balance over the last 3 months **(c)** £
  
3. i. What factoring/discount finance facilities do you have?**(d)** £  
 ii. How much of this are you utilising?**(e)** £  
 iii. How much of the agreed facilities are not taken up, averaged over the last 3 months? **(f)** £  
**(d) minus (e)** £
  
4. What other financial resources do you have available? £  
 Give details, for instance attached financial accounts which meet the tests set out in Annex 6 and show the availability of finance to the prescribed sum for the total authority on the operator's licence(s):  
**(g)** \_\_\_\_\_

**Total : (a) + (b) +(f) + (g) = (h)** £

**Total:(c) (i)** £

**Available Resources (h) minus (i)** £

(This figure must equal or exceed the amount set out in the opening paragraph above. The traffic commissioner may not accept real assets. Please refer to the Senior Traffic Commissioner's Statutory Guidance and Statutory Directions.)

You need send no supporting documents at this stage, but the traffic commissioner reserves the right to call for further financial evidence if necessary. **Making a false declaration may result in regulatory action being taken against your licence.**



## ANNEX 5 - ASSESSING BANK STATEMENTS

This is to be read in conjunction with the Statutory Directions. It sets out how caseworkers should assess the average balance from bank statements when submitted in support of a **new application**, a **variation application** to increase vehicle authority, and an **application to upgrade** a licence from restricted to standard.

### Existing Licences

When assessing the average balance from statements for all **existing licences** bank or equivalent statements for a period of 3 months must be provided. As the intention is that vehicles and trailers should not be used in an unsafe condition the relevant balance is that shown at the end of the relevant day. The assessment carried over that 3 month period starts with the latest up to date closing balance submitted, then and go backwards in 10 day steps using the same dates on each month, to exactly 3 months earlier. This gives 10 figures, which are added and then divided by 10 to give the average balance.

### Applicants

Applicants who choose to submit bank statements as evidence of financial standing are required to provide original bank statements for a recent full four weeks to the new level of authority. Uploaded electronic copies of original statements and internet statements are acceptable in the case of digital applications, subject to paragraphs 48 and 49 of the above guidance. "Recent" means that the closing balance on the evidence to be assessed should not be more than 2 months prior to the date the application is received by the Central Licensing Office.

When statements are provided the way to check that the **applicant** meets the level set is as follows:

1. Establish the amount required for the licence type and number of vehicles applied for. For variations to existing licences this must include the total number of vehicles to be authorised and for multiple licence holders operators it must include the total number of vehicles across all licences held/applied for with the first vehicle on each licence taken at the higher rate and subsequent vehicles on each licence taken at the lower rate.
2. Check the bank statements as follows:
  - a. Take the latest available closing balance (no more than 2 months from the date of receipt of the application), including any unused capacity on an overdraft facility, and the balance 27 days prior to that date then take the two best closing balances during the intervening period. Then take an average of the 4 balances including any unused capacity on an overdraft facility.
  - b. If the average equals or exceeds the requirements the operator/applicant has met the requirement of financial standing.
  - c. If the average is less than the requirement the applicant must provide evidence of additional financial resources available in accordance with Statutory Guidance and Directions. The applicant should be advised that

the traffic commissioner will be obliged to refuse the application if access to the total resources required cannot be demonstrated.

### **New Applications only**

3. If an applicant for a new licence has provided an opening balance or only the closing balance demonstrates access to sufficient funds the evidence can be accepted provided that a finance undertaking (Goods) or condition (PSV) is accepted which requires the applicant to provide a further set of bank statements covering 3 months from a specified period (e.g. 4 or 6 months from the anniversary of the granting of the licence). This is required so that the traffic commissioner can be satisfied that they still meet the financial test required of licence holders and the test at 4 below will be applied.

### **Finance Undertakings/Conditions**

4. Where a licence is granted on the basis of an undertaking (Goods) or condition (PSV) that available finance will be reviewed again within a specified period, usually by requiring the operator to submit original statements or other evidence, the averaging exercise will be for a 3 month period unless the traffic commissioner specifies otherwise. The assessment carried over that 3 month period starts with the latest up to date closing balance submitted, then and go backwards in 10 day steps using the same dates on each month, to exactly 3 months earlier. This gives 10 figures, which are added and then divided by 10 to give the average balance.

## ANNEX 6 - INTERPRETING FINANCIAL ACCOUNTS

Financial accounts have to be prepared to a set format. The two most important elements are the Profit and Loss Account and the Balance Sheet.

Staff should initially check the Profit and Loss Account at the 'Profit before Tax' line, to ensure the company is trading profitably. Figures in brackets usually mean a loss.

Staff should check the Balance Sheet and then calculate the following ratios.

- The ratio of total assets divided by total liabilities, which should normally be greater than 1.0. In simple words, the company should own at least as much as it owes. If the operator, however, is a limited company and the shortfall is covered by directors loan account balances, this may be acceptable if the loan account balances are confirmed as at least a semi-permanent features of the accounts.
- The ratio of current assets divided by current liabilities should exceed 0.5. In other words, the company can realise at least sufficient cash to pay off half its creditors. A ratio above 0.5 but below 1 may indicate difficulties. If this ratio is below 1, the matter should be referred to the traffic commissioner who may then undertake an examination of the make up of creditors. If the deficit is covered by bank overdraft, loans, mortgages, HP contracts or directors' current account balances etc, this would again be acceptable upon confirmation that none of these facilities are likely to be withdrawn. If, however, these liabilities are large, staff should satisfy themselves that any ongoing repayments are covered by cash flow.

## **ANNEX 7 - SCHEDULE OF PROPERLY ACCREDITED PERSONS & ACCOMPANYING GUIDANCE**

### **How traffic commissioners will test whether the person signing off individual annual accounts is properly qualified**

All certified annual accounts submitted as proof of financial standing will need to include a statement giving the personal details of the person signing them off and their qualifications – in terms of which supervisory body or qualifying body from the list above their qualification came from.

- (a) As a first step, a check will be made of the online register of authority auditors. The register is available at:

[www.auditregister.org.uk/Forms/Default.aspx](http://www.auditregister.org.uk/Forms/Default.aspx)

- (b) In the event that the individual is not listed here, a check will be made of the qualifying or supervisory body given as part of the personal details of the auditor submitted with the annual accounts

“Statutory auditors” are auditors of:

- (a) Companies defined by Part 16 of the Companies Act 2006, or;
- (b) Building Societies or certain other entities under legislation applying to them.

A person (either an individual or a firm, as defined in Part 42 of the 2006 Act) is eligible for appointment as a statutory auditor by virtue of either Chapter 2 or Chapter 3 of Part 42 of the Act. In practice, almost all appointments are of persons eligible by virtue of Chapter 2, but for the purposes of certifying accounts, both will be allowed.

In order to qualify to certify annual accounts or opening balances, two specific requirements must be met:

#### **Requirement 1 – Being a member of a recognised supervisory body**

Section 1212 of the Companies Act 2006 provides that a person is eligible for appointment as a statutory auditor if they are:

- (a) A member of a recognised supervisory body; and
- (b) Eligible for appointment under the rules of that body.

Supervisory bodies are then defined in section 1217 as bodies which maintain and enforce rules as to:

- (a) Eligibility for appointment as a statutory auditor, and
- (b) The conduct of statutory audit work.

In practice, the Professional Oversight Board of the Financial Reporting Council (POB) authorises a professional accountancy body to act as a supervisory body. The current recognised supervisory bodies are listed below.

## **Requirement 2 – Professional qualifications**

Individuals eligible for appointment as statutory auditors must also either:

- (a) Hold an “appropriate qualification” recognised in the UK, or;
- (b) Be an individual eligible for appointment in another EEA state who must pass a UK aptitude test in any areas not covered by any professional qualification they already hold.

Sections 1219 and 1220 of the Companies Act 2006 cover appropriate qualifications recognised in the UK. Again, POB has responsibility for determining what the eligible qualifications are for auditors. The recognised professional qualifying bodies are listed below.

### **Recognised Supervisory Bodies**

1. Association of Authorised Public Accountants (AAPA)

[www.accaglobal.com/aapa](http://www.accaglobal.com/aapa)

2. Association of Chartered Certified Accountants (ACCA)

[www.accaglobal.com](http://www.accaglobal.com)

3. Institute of Chartered Accountants in England and Wales (ICAEW)

[www.icaew.com](http://www.icaew.com)

4. Institute of Chartered Accountants in Ireland (ICAI)

<http://www.charteredaccountants.ie>

### **Recognised Professional Qualifying Bodies**

1. Association of Chartered Certified Accountants (ACCA)

[www.accaglobal.com](http://www.accaglobal.com)

2. Association of International Accountants (AIA)

[www.aiaworldwide.com](http://www.aiaworldwide.com)

3. Chartered Institute of Public Finance and Accountancy (CIPFA)

[www.cipfa.org.uk](http://www.cipfa.org.uk)

4. Institute of Chartered Accountants in England and Wales (ICAEW)

[www.icaew.com](http://www.icaew.com)

5. Institute of Chartered Accountants in Ireland (ICAI)

[www.icaei.ie](http://www.icaei.ie)

6. Institute of Chartered Accountants of Scotland (ICAS)

[www.icas.org.uk](http://www.icas.org.uk)

## ANNEX 8 - EU LEGISLATION

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

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

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

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

(c) have appropriate financial standing; and

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

### **Article 7 - Conditions relating to the requirement of financial standing**

1. In order to satisfy the requirement laid down in Article 3(1)(c), an undertaking shall at all times be able to meet its financial obligations in the course of the annual accounting year. To this end, the undertaking shall demonstrate, on the basis of annual accounts certified by an auditor or a duly accredited person, that, every year, it has at its disposal capital and reserves totalling at least EUR 9 000 when only one vehicle is used and EUR 5 000 for each additional vehicle used.

For the purposes of this Regulation, the value of the euro in the currencies of Member States which do not participate in the third stage of the economic and monetary union shall be fixed every year. The rates to be applied shall be those obtained on the first working day of October and published in the *Official Journal of the European Union*. They shall have effect from 1 January of the following calendar year.

The accounting items referred to in the first subparagraph shall be understood as those defined in Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies(1)

2. By way of derogation from paragraph 1, the competent authority may agree or require that an undertaking demonstrate its financial standing by means of a certificate such as a bank guarantee or an insurance, including a professional liability insurance from one or more banks or other financial institutions, including insurance companies, providing a joint and several guarantee for the undertaking in respect of the amounts specified in the first subparagraph of paragraph 1.3.

The annual accounts referred to in paragraph 1, and the guarantee referred to in paragraph 2, which are to be verified, are those of the economic entity established in the Member State in which an authorisation has been applied for and not those of any other entity established in any other Member State.

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

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

(c) a time limit not exceeding 6 months where the requirement of financial standing is not satisfied, in order to demonstrate that that requirement will again be satisfied on a permanent basis.

#### **Note:**

The Fourth Council Directive 78/660/EEC of 25 July 1978 is based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies and is a consolidation of existing Directives on the annual accounts of limited liability companies. Those Directives include Directive 86/635/EC on the annual accounts and consolidated accounts of banks and other financial institutions and Directive 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings and apply to all limited companies. They also apply to certain forms of partnership such as Limited Liability Partnerships.

The annual accounts are to comprise a balance sheet, a profit and loss account (See Annex 6) and the notes to the accounts. These documents constitute a composite whole. The Directives lay down the principles which govern the drawing up of these documents.

The balance sheet: the Directives provide for two balance sheet layouts, leaving it to the Member States to choose. It then lists the balance sheet items and comments on them.

The Directives state general principles for the valuation of items in the annual accounts, such as prudence, consistency in the application of the methods of valuation, etc. They also set out specific valuation rules.

The Directives list the information which must be provided in the notes to the accounts: the valuation methods applied to the various items, undertakings in which the company holds a certain percentage of the capital, certain types of the company's debts, financial commitments not included in the balance sheet, etc.

The annual report must include a 'fair' review of the development of the company's business and of its position. It must also provide information on any important events that have occurred since the end of the financial year, the company's likely future development and activities in the field of research and development.

The Directives lay down certain rules on publication (documents which must be published, etc.).



The Directives also provide for a system of auditing under which companies must have their annual accounts audited by one or more persons authorised by national law to audit accounts. Such a person or persons must also verify that the annual report is consistent with the annual accounts for the same financial year.

Less strict rules are laid down for small and medium-sized companies. Member States may lighten their obligations in respect of the publication of annual accounts or dispense small companies from the requirement that the annual accounts be audited.

"Small" companies are companies which, on their balance sheet dates, do not exceed the limits of two of the following three criteria:

- balance sheet total: EUR 4 400 000;
- net turnover: EUR 8 800 000;
- number of employees: 50.

"Medium-sized" companies are:

- balance sheet total: EUR 17 500 000;
- net turnover: EUR 35 000 000;
- number of employees: 250.