

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

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Foreword

1. WHO SHOULD READ THIS DOCUMENT?

- 1.1** The following will have an interest in this document, which applies to the traffic commissioner system – i.e. England, Wales and Scotland only:
- Road haulage and road passenger transport operators with Operator licences (O-licences) issued by the Traffic Commissioners, their representative organisations and relevant Government authorities.
 - Transport managers employed by or acting for an O-licence holder that meet the professional competence requirement by holding a valid Certificate of Professional Competence, a valid third-party qualification or ‘grandfather rights’.
 - Any person considering applying for an O-licence, becoming a transport manager or anyone else with an interest or involvement in the carriage of freight or passengers by road.

2. WHAT ARE WE ARE SEEKING VIEWS ON?

The rules on operator licensing, applied in Great Britain by the traffic commissioners, are based on an existing EC Directive¹ that sets out common rules that all EC member states must apply to their domestic O-licensing systems. That Directive will be replaced by a new EC Regulation² – which will apply from 4 December 2011. This Regulation makes a number of changes to the rules on O-licensing that will affect how the requirements to apply for and hold an O-licence will operate in future.

- 2.1** Our overriding principle aim in implementing the new Regulations is to minimise any additional burdens on industry and enforcement agencies. Most (but not all) of the requirements in the Regulation are mandatory, with no scope for individual member states to decide how to interpret them. This consultation document therefore does two things:
- a. It sets out what the most important new requirements are, for information, and how existing practices need to change.
 - b. In some areas individual member states can determine how they should implement certain elements of the Regulation. The Department for Transport’s approach in these areas is to adopt those that would lessen or reduce the burden of the new Regulation. It is

¹ 96/26/EC as amended by Council Directive 98/76/EC and 2004/66/EC

² EC Regulation 1071/2009

therefore important to determine what our policy is on these key areas well before the Regulation becomes law, so that operators have enough time to meet the new requirements before the December 2011 deadline. Seeking views on what these policies should be is the purpose of this consultation exercise.

Executive Summary

The key areas covered by this consultation where we are seeking views are:

Chapter 1

New rules on **Transport Managers**.

Chapter 2

New rules on demonstrating **Financial Standing**.

Chapter 3

New rules on **Certificates of Professional Competence, Third Party Qualification Exemptions and 'Grandfather Rights'**.

Chapter 4

New requirements on how all operators prove that they are properly **established in the member state licensing them; Issuing Community Licences to Restricted PSV Licence-Holders; and increasing penalties for PSV vehicles operating without a valid O-licence.**

Chapter 5

The requirement for each member state to establish a **National Register** containing specific details about their operator licence holders and transport managers.

How to Respond

WHY IS IT IMPORTANT TO RESPOND?

This consultation is an important opportunity for those subject to or affected by any of the traffic commissioners' functions covered by this Regulation to express their views to the Secretary of State on how the traffic commissioners perform their functions and regulate the industry in the future.

The consultation period began on **Monday 4 April** and will run until **Friday 20 May**, please ensure that your response reaches us by that date. Formal written consultations normally run for 12 weeks, however, as the Department has already had various informal stakeholder meetings, the Minister has approved a shorter consultation period of 7 weeks. If you would like further copies of this consultation document it can be found at:

<http://www.dft.gov.uk/consultations/open>

or you can contact Steve Blackmore on 020 7944 3339 if you would like alternative formats (Braille, audio CD, etc).

A consultation response form is attached at **Annex 2**

Please send consultation responses to:

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When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

A list of those consulted is attached at Annex 4. If you have any suggestions of others who may wish to be involved in this process please contact us.

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Questions

Further guidance on how to write consultation questions can be found at

<http://www.bis.gov.uk/policies/better-regulation/consultation-guidance>

The Proposals

CHAPTER 1

TRANSPORT MANAGERS

Contents

- Introduction
- How is the role of transport manager changing?
 - An 'internal' transport manager
 - An 'external' transport manager
- Can an 'internal' transport manager also act on a part-time basis as an 'external' transport manager?
- Traffic Commissioner role
- Disqualification of transport managers
- Change to the role of the transport manager at licence application
- Data management
- Questions

Introduction

1. Under existing EC and domestic legislation, to obtain and keep a standard (i.e. Hire or Reward) O-licence, operators have to prove, among other things, that they have the required specialist knowledge – termed 'professional competence' - to run a road transport business safely and effectively. This is the role of the transport manager.
2. In general, transport managers prove their professional competence in one of two ways – by passing an examination (either a Certificate of Professional Competence or a third-party equivalent), or via 'grandfather rights'. Further advice on how these qualifications are changing can be found in Chapter 3.
3. As part of the application process, the nominated transport manager is required to sign a declaration that this person understands his/her responsibilities. It is for the Traffic Commissioner to determine, in individual cases, whether the operator's proposed arrangements for transport managers are acceptable. Whilst Traffic Commissioners have no powers to disqualify a transport manager at present, they can question their good repute and professional competence, thereby inhibiting their fitness to continue to perform that role.

How is the role of transport manager changing?

4. The need for the holder of a standard licence to have a transport manager is unchanged. Under the Regulation, transport managers who must themselves be of good repute and professionally competent, are required by the new Regulation to fall into one of two categories:

An 'internal' transport manager

5. This type of transport manager is closely connected with the operator. To qualify, they must meet three requirements:
- Effectively and continuously perform their transport manager role for the operator in question³.
 - Have a genuine link to the operator such as being a full or part-time employee, director or owner.
 - Be resident in a European Union country.
6. Under the new Regulation it will also be possible for the same person to act as an 'internal', part-time, employee transport manager for more than one operator, and therefore be named on more than one O-licence. However, in each case, the Traffic Commissioner would need to be satisfied that the person had a genuine link to the operator and satisfied the requirement of effective and continuous management, as set out above.

An 'external' transport manager

7. When an operator does not:
- a. Himself fulfil the role of transport manager (i.e. they lack the professional qualification and are perhaps an owner/driver or sole trader); or
 - b. Employ a qualified transport manager on a full or part-time basis (i.e. the operator does not have an 'internal' transport manager);
8. The operator may 'hire-in' a transport manager - e.g. a consultant transport manager under contract to an operator on a part-time basis. This is considered to be an 'external' transport manager. Under the new Regulation, to do this, the contractor must have effective and continuous management responsibility for the transport activities of the operator and:

³ The full requirement in the new Regulation is to have a genuine link to the undertaking, such as being an employee, director, owner or shareholder or administering it, or if the undertaking is a natural person, is that person

- Be of good repute and be resident in a European Union country
- Have a contract with the operator that specifies the tasks they perform as transport manager. The new Regulation sets out, in broad terms, what that contract should cover. Although contract details will be a matter for individual transport managers and operators to determine, we have produced a suggested list of core topics that reflect the requirements of the new Regulation at **Annex A** to this Chapter.
- Only work for a maximum of 4 operators⁴ with a combined maximum total fleet of 50 vehicles – meaning that across all four operators, they cannot have responsibility for more than 50 vehicles. Individual Member States do have freedom to lower the 4/50 maximum and we intend that Traffic Commissioners should be able to set lower limits in individual cases.
- Each transport manager must be responsible only to the operator and not anyone else⁵.

Can an ‘internal’ transport manager also act on a part-time basis as an ‘external’ consultant transport manager?

9. The new Regulation does allow individual Member States the freedom to decide whether an ‘internal’ transport manager that is employed or has another type of genuine link to the operator could work as an ‘external’ consultant transport manager for other operators. We propose to adopt this flexibility. It would allow, for example, a transport manager that is employed on a full-time basis for one operator to offer their services under contract on a limited part-time basis to another operator – e.g. an owner-operator with one or two vehicles. This could offer a useful flexibility, particularly for small businesses.
10. However, if this flexibility were adopted, the new Regulation requires that an individual wishing to work as both an ‘internal’ and ‘external’ transport manager would be subject to a maximum limit of working for four operators with a combined maximum of fifty vehicles. These limits would take into account how many operators and vehicles they had responsibility for in both their ‘internal’ and ‘external’ transport manager jobs. Building on the flexibility outlined in the third bullet of paragraph 8 above, Traffic Commissioners would also have discretion to lower the

⁴ In the case of passenger transport, this includes an entity regardless of its particular form or legal constitution (i.e. includes unincorporated associations etc) , and for those engaged in freight carriage for a commercial purpose, an individual or legal person (e.g. sole trader, partnership, company).

⁵ The wording of the Regulation is that the person performs the specific tasks solely in the interests of the undertaking and his or her responsibilities are exercised independently of any undertaking for which the undertaking carries out transport operations.

4/50 figures where they considered, on an individual basis, that this was necessary.

Traffic Commissioner role

11. As now, it will be for a Traffic Commissioner to determine, in individual cases, whether a transport manager(s) meet the requirements set out above. Traffic Commissioners gave a practice direction in 2007⁶ setting out how they determine whether individual operators have acceptable arrangements for the use of transport managers. This will remain valid under the Regulation⁷ and the factors include:
- The number of licences for which the manager would be responsible;
 - The amount of time he would spend in carrying out his duties;
 - The number of centres and vehicles for which he would be responsible as a transport manager;
 - His location and that of the centres he would be responsible for;
 - Any other employment or activities that might restrict his ability to devote sufficient time to his duties and the terms on which he would be employed and the contract of his employment.
12. Where problems occur - for example, a Traffic Commissioner is considering regulatory action because of a failure properly to exercise the transport manager role – it would remain for the Traffic Commissioners to determine where the blame lies. However, the prime responsibility will remain with the operator to ensure that there is proper clarity between their role and that of the transport manager. As far as ‘external’ transport managers are concerned, the operator will not be able to use the contract arrangements to lay all the responsibility – and therefore the blame for any failures – wholly on the transport manager. Even where the contractual arrangements are clear, a Traffic Commissioner could still hold both the operator and the transport manager to blame for infringements.

Disqualification of transport managers

13. Traffic Commissioners have no powers under existing EC or domestic legislation to disqualify a transport manager as such. They cannot currently disqualify a person other than a licence holder. But they are entitled to raise the issue of a transport manager’s continued good repute or professional competence and calling them in for a public inquiry to determine the matter. A finding that the transport manager has

⁶ Practice Direction No.7 – Transport Managers (Issued August 2007)

⁷ But will be replaced in due course by statutory Directions and Guidance issued by the Senior Traffic Commissioner under Part 1 of the Local Transport Act 2008.

lost good repute or professional competence may well prevent the transport manager from continuing to fill that role and jeopardises the O-licence as well.

14. However, the new Regulation will allow Traffic Commissioners to take direct regulatory action against transport managers. So, for example, if, following a full assessment of all the facts – perhaps including a public inquiry – a Traffic Commissioner determined that an individual transport manager no longer met the requirements of good repute or professional competence, the Traffic Commissioner must declare that transport manager to be ‘unfit’. Such a declaration would remain in place until a Traffic Commissioner determined that the professional competence or good repute requirements had been restored – and they will have to determine rehabilitation measures that the transport manager would need to comply with before fitness could be restored (which can involve reassessment by a Traffic Commissioner). Under the new Regulation, the declaration of unfitness must also be entered into the UK national register of operators (see Chapter 5) and the declaration would be shared with licensing authorities in other Member States. Such declarations would, of course, under the new Regulation, be subject to existing appeal processes.
15. Under the new Regulation, a declaration of unfitness would only apply to an individual’s fitness as a transport manager. So, for example, if the operator and transport manager are the same person (e.g. a sole trader) and they received a three-year disqualification from being a transport manager and a two-year disqualification from being an operator, the same person could reapply for a licence as an operator after the two-year period had expired, but would need to either employ a different person as transport manager, or have undertaken any rehabilitation imposed by a Traffic Commissioner before their fitness as a transport manager could be restored.
16. These new powers would also have implications for transport managers seeking employment in other member states. For example, if a transport manager loses their good repute and is declared ‘unfit’ in Great Britain, their Certificate of Professional Competence would not be valid in any other Member State either. They would effectively be subject to an EC-wide ban until their repute is restored by a Traffic Commissioner.

Change to the role of the transport manager at licence application

17. Transport managers are more prominent and have greater personal responsibility under the new Regulation. In view of this, the Department is proposing that both the transport manager or managers and the operator should be required to sign-up to their individual responsibilities and directly declare their competence, good repute and other information on the O-licence application form. Each transport manager

will also be required to state on the O-licence application form whether they are employed as an 'internal' or 'external' transport manager and whether they are acting as a transport manager on any other existing O-licence.

18. For 'internal' transport managers, the Department takes the view that the new Regulation does not require Traffic Commissioners to automatically request proof of 'genuine link' (described in paragraph 5 above) as part of the application process – but would be able to do so where Traffic Commissioners thought that individual cases warranted it, either at application stage or any time thereafter (e.g. at a public inquiry).
19. For 'external' transport managers, the new Regulation requires a copy of the transport manager contract to be provided with the licence application. In addition, the application process will require each transport manager to sign a formal declaration of core responsibilities. These are:
 - Not to break the 4/50 rule.
 - To have a contract that specifies what their responsibilities are.
 - To act solely in the interests of the operator engaging him and not in the interest of any third party (e.g. a parent company).
20. This would allow the Traffic Commissioner to determine whether the general requirements were being met at application stage. As well as considering the contract at application stage, Traffic Commissioners are entitled to make further enquiries about contractual arrangements in individual cases, either at that time or once the licence was granted (e.g. via a public inquiry). These requirements would be on top of the existing requirement that the Traffic Commissioner should be satisfied that each transport manager is engaged for sufficient time to ensure 'effective and continuous management' of the transport business.

Data management

21. In order to implement the requirements of the new Regulation, the Traffic Commissioners will need to write to all hire or reward operators that are subject to the Regulation asking them to confirm the name(s) and details of their transport managers and whether they are employed on an 'internal' or 'external' basis. Although not specifically required by the new Regulation, to aid this process, suggested guidelines on what criteria applicants, transport managers and where necessary Traffic Commissioners should apply when deciding whether an individual transport manager is 'internal' or 'external' are set out at **Annex B** of this Chapter.

Questions

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

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

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?

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

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

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

Annex A

SUGGESTED LIST OF MINIMUM AREAS COVERED BY A CONTRACT OF EMPLOYMENT BETWEEN AN OPERATOR AND AN 'EXTERNAL' TRANSPORT MANAGER

- The serial number(s) of the operator licence(s) for which that transport manager will be responsible.
- The date of start of employment by the operator in the function of transport manager.
- The amount of time which the transport manager will spend in carrying out his or her duties for the operator on each licence.
- The activities that the transport manager will take primary responsibility for. As a minimum this will comprise any role in:

- The making of arrangements to ensure that drivers comply with hours and tachograph rules and with speed limits;
- The maintenance of the applicant's vehicles, including the inspection of vehicles at the appropriate time and the action taken to remedy defects found;
- The reporting and recording of vehicle defects by drivers;
- The method of compilation and the accuracy of all records kept, which must be for a period of not less than 15 months;
- The making of arrangements to ensure that the applicant's vehicle/s are not overloaded;
- Any role for the transport manager in ensuring that authorised vehicles will be kept at the authorised Operating Centre(s) when not in use;
- Any role for the transport manager in notifying the Traffic Commissioner (in writing) of all prosecutions and convictions concerning the company, the drivers and him/herself within 28 days of the court hearing;
- Arrangements for notifying the relevant Traffic Commissioner of resignation of a transport manager.
- The number of operating centres and number of authorised vehicles for which the transport manager is responsible.
- The contractual mechanisms to deal with any other employment or activities in which the transport manager is engaged and which may restrict his/her ability to devote sufficient time to the duties of a transport manager on that operator's licence(s).
- Any role that the transport manager has in:
 - Verifying contracts and documents;
 - Basic accounting;
 - Any other role in safety procedures.

Annex B

SUGGESTED GUIDELINES FOR DETERMINING WHETHER A TRANSPORT MANAGER IS AN EMPLOYEE OR A CONSULTANT

1. It is important for the correct application of the Regulation for the Traffic Commissioner to know whether each transport manager working for the operator is directly employed by them or self-employed as an independent contractor.
2. The essential criteria are that employees work under a contract of service and contractors have a contract for services. However, in order to determine the nature of the contractual relationship, it is necessary to apply common law principles. General guidance is issued by HM Revenue and Customs (HMRC) on the factors that should be considered in determining whether a person should be considered as an employee or self-employed⁸ and transport managers, operators and Traffic Commissioners can be expected to take the same considerations into account in determining that status. The following, taken from the HMRC guidance, indicates the general factors:

The transport manager is an employee

3. As a general guide, if the answer is 'yes' to all the following questions, then the worker is probably an employee:
 - Do they have to do the work themselves?
 - Can someone tell them at any time what to do, where to carry out the work or when and how to do it?
 - Can they work a set amount of hours?
 - Can someone move them from task to task?
 - Are they paid by the hour, week or month?
 - Can they get overtime pay or bonus payments?

The transport manager is self-employed

4. As a general guide, if the answer is 'yes' to all the following questions, then the worker is probably self-employed:
 - Can they hire someone to do the work or engage helpers at their own expense?
 - Do they risk their own money?
 - Do they provide the main items of equipment they need to do their job, not just the small tools that many employees provide for themselves?

⁸ <http://www.hmrc.gov.uk/employment-status/index.htm>

- Do they agree to do the job for a fixed price regardless of how long the job may take?
- Can they decide what work to do, how and when to do the work and where to provide the services?
- Do they regularly work for a number of different people?
- Do they have to correct unsatisfactory work in their own time and at their own expense?

Other relevant factors

5. There are also other factors that can be taken into account when determining whether the person is self-employed or an employee. The following factors are not exhaustive, but they do include the more important ones.

Personal service

6. It is a necessary condition of an employee contract of service that the worker is required to provide his or her services personally. Consideration must therefore be given to whether or not a worker could provide a replacement worker in his or her absence. This is usually referred to as a right of substitution.
7. Where both the worker and his or her engager understand that a suitably qualified or skilled person can (or must) be provided by that worker in his or her absence the situation is very likely to be self-employment.
8. The absence of a right of substitution (in other words a requirement for personal service) does not necessarily mean that the worker will be an employee. A requirement for personal service may exist in situations of employment and self-employment. See below for more information on substitution.

Mutuality of obligation

9. The minimum obligations that are necessary for an employee contract of service are the obligation on the part of the worker to give personal service and the obligation on the part of the engager to pay the worker for that service. An employment contract will often also indicate that the engager will provide work for the duration of the contract during the agreed working hours.

Right of control

10. The employee must be subject to a certain degree of control by the engager although control need not be exercised in practice. It is the right

of control that matters. The engager may control how a worker performs his services, what tasks have to be performed, when and, or where they must be performed.

11. The fact that a worker may be told how to perform duties will usually be seen as a strong pointer to employment but, where the worker is an expert (For example, a Transport Manager), the absence of this aspect of control would probably not be seen as material.
12. The employee will usually be expected to work set hours each day or week but may be permitted to work flexible hours and to work at the employer's premises or at other places with the agreement of the employer. The self-employed person is more likely to have the freedom to do work when and where he or she wants.

Right of substitution and engagement of helpers

13. Some contracts give the worker a right to send a replacement or engage a helper. Where the worker has to pay that person this would be regarded as an indicator of self-employment. The degree to which it points in that direction would depend on the particular circumstances of each case. Relevant considerations would include whether the engager reserved the right to reject a substitute and whether the right was exercised on a regular basis.
14. The worker may, however, only have a right to propose a substitute rather than a right to actually send a substitute, and this would probably be seen as only a mild pointer to self-employment.

Financial risk

15. Individuals who risk their own money by, for example, buying assets needed for the job and bearing the running costs and paying for overheads and large quantities of materials, are almost certainly self-employed. Employees are not usually expected to risk their own capital.
16. An example of a financial risk is where a skilled worker incurs significant amounts of expenditure on training in order to obtain the skills needed, which is used in subsequent engagements. This can be treated as a pointer to self-employment, in the same way as investment in equipment to be used in a trade, if there is a real risk that the investment would not be recovered from income from future engagements. Self-employed workers may also be required to rectify unsatisfactory work in their own time for no additional reward. Whether the person is self-employed according to these factors will also depend on consideration of the other elements of this guidance.

- 17.** Financial risk could also take the form of quoting a fixed price for a job, with the consequent risk of bearing the additional costs if the job overruns. The risk of making a loss is a very strong indicator of self-employment and can be decisive on its own.

Opportunity to profit

- 18.** A person whose profit (or loss) depends on the capacity to reduce overheads and organise work effectively may well be self-employed. People who are paid by the job will often be in this position. For example, a person who quotes a fixed price may well be able to complete the task ahead of schedule or at a lower cost than originally envisaged. People who provide their own materials may be able to profit by getting a good price on the materials or by charging more for them.

Length of engagement

- 19.** By itself, the length of a particular engagement may have little importance in determining employment status, although it is more likely that an employee will have an open-ended contract.
- 20.** It is; however, common these days for employees to be engaged on fixed term contracts. Where a person undertakes a number of short-term engagements for different engagers and runs the risk of bad debts, incurs expenditure in the course of obtaining engagements and so on, he or she may be regarded as self-employed. On the other hand, a person engaged on a short-term contract may be regarded as a casual employee. This factor must be viewed in the light of all the different aspects of a person's work.

Part and parcel of the organisation

- 21.** At one time this was considered to be a test of employment or self-employment, but it is now viewed as one factor to be considered with all the others.
- 22.** Establishing whether a person becomes 'part and parcel' of a client's organisation can be a useful indicator in some situations. For example, someone taken on to manage a client's staff will normally be seen as an integral part of the client's organisation and this may be seen as a strong indicator of employment.

Employee-type benefits

- 23.** The presence, in a contract, of benefits such as paid leave, membership of the firm's pension scheme, right to car park space, canteen facilities and so on is a good indicator that an employment relationship exists. A

contract of employment may also contain access to a grievance procedure and the worker may be subject to disciplinary procedures.

- 24.** The absence of such benefits may be viewed as a pointer to self-employment but the lack of these is usually as a consequence of the intention of self-employment. It may be necessary to consider whether employees of the engager, who do similar work, have access to such benefits. A comparison might also have to be made between the rates of pay of those employees and the 'contract' worker, as the latter may be paid a greater rate in order to compensate in part for the absence of such benefits.

Right to terminate contract

- 25.** A right to terminate an engagement for a reason other than serious breach, by giving notice of a specified length, may be viewed as indicative of a contract of employment, but, at best, would only be regarded as a minor factor. Such a provision is unlikely to be found in a contract for services, which usually ends on completion of the task, or if the terms of the contract are breached.

Personal factors

- 26.** In deciding a person's employment status it may sometimes be necessary to take into account factors which are personal to the worker and which have little to do with the terms of the particular engagement being considered. For example, if a skilled worker works for a number of clients throughout the year and has a business-like approach to obtaining engagements (perhaps involving expenditure on office accommodation, office equipment and so on) this will point towards self-employment.

Mutual intention

- 27.** The intention of both parties can be decisive where the factors pointing to employment and to self-employment are evenly balanced. But a stated intention, for example, for self-employment is of no consequence where the facts point clearly to employment.

Summary

- 28.** Whether a worker is an employee or self-employed depends on a range of factors, but the final opinion is not reached by adding up the number of factors pointing towards employment and comparing that result with the number pointing towards self-employment. The courts have specifically rejected that approach.

- 29.** It is a matter of evaluation of the overall effect, which is not necessarily the same as the sum total of all the individual details. Not all details are of equal weight or importance in any given situation. The details may also vary in importance from one situation to another.
- 30.** When the detailed facts have been established, the right approach is to stand back and look at the picture as a whole, to see if the overall effect is that of a person working in a self-employed capacity or a person working as an employee in somebody else's business. If the evidence is evenly balanced, the intention of the parties may then decide the issue.

CHAPTER 2

FINANCIAL STANDING

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- **Annex A** - Types of finance agreements that can be used as evidence of financial standing
- **Annex B** - Who can certify annual accounts and opening balances

Introduction

1. Under existing GB operator licensing rules for all types of licence, a Traffic Commissioner must be satisfied at all times (i.e. at the time of licence application and continuously thereafter) that an operator has appropriate financial resources. This is to ensure proper road safety and fair competition. Operators are required to give details at licence application stage of any recent bankruptcy, insolvency, liquidation or disqualification in relation to a company. Applicants are also asked for details of financial resources and to give supporting evidence (such as bank statements and a statement of assets, or most recent accounts).
2. For standard goods vehicle (i.e. hire or reward) licences and buses carrying fare-paying passengers, operators also need to satisfy the Traffic Commissioner that they have adequate financial resources to start up and run their transport business properly. As well as assets (such as vehicles and premises) there must be enough working capital (such as cash, loan facilities, or other assets that can be turned quickly into cash) to cover all expenses that are likely to arise before any money is earned to meet them.
3. The existing EC Directive on operator licensing specifies the financial limits that are used to determine financial standing. They are €9000 for the first vehicle and €5000 for each subsequent vehicle. Member states

that have not participated in monetary union are also required to set their financial standing limits every five years – using the Euro exchange rate that applied on the first working day of October the previous year⁹. Traffic Commissioners also use their domestic powers to set cash limits for restricted licence-holders, who are not covered by the existing Directive (or the new Regulation). For Goods Vehicles, restricted licences apply to those carrying their own goods and therefore not operating for hire or reward only. And for buses, it means those with no more than two vehicles of less than 8-seats; or between 9 and 16 seats, which are not being used as part of a passenger transport business.

How is the financial standing requirement changing?

4. Financial standing for restricted (i.e. own account) licence holders is not covered by the Regulation and will remain a matter for the Traffic Commissioners. Under the new Regulation, financial standing for hire or reward operators can only be met by one of three means. The Regulation requires that the operator is able to meet the financial standing test at all times and that operators must show, by certified annual accounts, that for every year they have the necessary capital and reserves for their vehicles. New operators, rather than proving a trading history of a parent company, may show the required level of funds by providing a certified opening balance. Individual Member States may alternatively choose to allow financial standing to be demonstrated by a financial guarantee from an appropriate financial institution.

1 - Certified annual accounts

5. Under the new Regulation, these are annual accounts that must be certified by a properly qualified person. The Regulation also specifies the form and content of the annual accounts and requires them to be drawn up clearly and give a true and fair view of the company's assets, liabilities, financial provision and profit or loss. The items that must comprise the annual accounts are:
 - Balance sheet¹⁰
 - Profit and loss account
 - Notes on the accounts
6. Traffic Commissioners already accept audited annual accounts in this form as proof of financial standing. We do not plan to issue any further guidance on the annual account requirements to operators because a

⁹ The financial limits for GB hire or reward operators were last revised on 1 January 2010

¹⁰ These accounting terms are as defined in EU Council Directive 78/660/EEC

qualified auditor or other competent person will be aware of how to produce annual accounts in this form.

2 - Certified opening balance for new operators

7. New businesses may not have access to annual trading accounts at the time of licence application. So the new Regulation allows them to submit a statement, certified by a properly qualified person, setting out their assets and liabilities before they started trading, as proof of financial standing for their first year. This may not be required by all new applicants. For example, subsidiaries of existing companies may be able to provide the necessary proof by submitting annual accounts of the parent company. However, there may be smaller operators, particularly self-employed start-ups, who would be unable to meet the financial standing test by those means. In the light of paragraph 8 below, a certified opening balance would be the only means of doing so.
8. For new businesses applying for a licence that are not in the position to provide any form of annual accounts, Traffic Commissioners currently allow such applicants to prove financial standing by providing evidence of a sufficient opening bank balance – with a review up to 12 months after grant of the licence. The new Regulation renders this practice no longer possible after December 2011. However, the new Regulation does allow new operators to provide a certified opening balance (by a properly qualified person – see paragraph 7 above) to cover their first year of trading, with audited annual trading accounts for the second and subsequent years.

3 - Financial guarantee

9. The new Regulation also allows individual Member States to allow operators not wishing or not able to prove financial standing via audited accounts to have another option available to them – a financial guarantee. We propose to adopt that flexibility. Valid guarantees will range from a simple overdraft facility, to an invoice finance agreement. The full list of permissible guarantees is at **Annex A** to this Chapter – under existing EC and domestic legislation, they are all already accepted by Traffic Commissioners as proof of financial standing.

Who can certify audited accounts?

10. The new Regulation requires operators wishing to use annual accounts or an opening balance to demonstrate financial standing to have them certified by a properly qualified person. The Regulation does not specify who those ‘properly qualified persons’ are. Therefore, the Department has set out at **Annex B**, proposals on who would qualify to certify those accounts for operator licences issued by the Traffic Commissioners, and explains what checks they will undertake to make sure that the person

certifying is properly qualified. The new Regulation does not permit applicants or operators to rely on accounts that it produces itself (e.g. management accounts) unless they are certified by a suitably qualified person in the required format outlined in paragraph 5 above - e.g. they have a properly accredited person as one of their employees.

Setting domestic financial standing limits against the Euro

11. Under existing EC law, financial limits are set every five years in sterling, using the Euro exchange rate that applied on the first working day of October the previous year. The new Regulation requires this rate to be set on 1 January each year, again based on the sterling/ Euro exchange rate on the first working day of October the previous year. This means that the sterling financial standing requirement will more closely track the Euro exchange rate and will be reset on 1 January 2012 using the rate applying on Monday 3rd October 2011.

Transitional arrangements

12. The new Regulation requires financial standing by either annual accounts, a certified opening balance or a financial guarantee to be binding on all operators – both existing and new applicants – from 4 December 2011. Therefore:
- **New operators** whose licences have not been granted before 4 December 2011 will need to provide proof – as part of the licence application process – that they satisfy the new financial standing arrangements outlined in this Chapter.
 - **Existing operators** will continue to be subject to a 5-year check by the Traffic Commissioner that they meet the legal requirements to retain their licence – including financial standing. Traffic Commissioners will continue to review compliance with licence conditions whenever there is an application for a change to the licence, for additional vehicles to be authorised or when there is evidence of non-compliance with any conditions on the licence. Any such checks falling on or after 4 December 2011 will include confirmation that the operator meets the new financial standing requirement. Operators would be expected to provide evidence of financial standing that conforms to the Regulation, should a Traffic Commissioner request it at any time after December 2011.

Questions

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

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?

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?

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

Annex A

Types of finance agreements that can be used as evidence of financial standing

As explained earlier in the Chapter, the primary mechanism for financial standing to be demonstrated continuously throughout the licence is via certified annual accounts or, for new operators, a certified opening balance followed by annual certified accounts. However, the new Regulation allows individual member States to provide a further option to allow financial standing to be proved via a financial guarantee. The Department proposes to adopt this flexibility and this annex sets out proposals on what forms of guarantee are acceptable.

As is currently the case, all forms of guarantee must be continuously in place. If any guarantee ceases to be provided at any time, or falls below the required levels, the operator will not be judged to meet the financial standing test. In this case, as with annual accounts above, they must inform the Traffic Commissioner and provide alternative acceptable forms of evidence that the test can be met, in order to retain their O-licence. The financial guarantees that are acceptable as proof of financial standing are explained below.

Overdraft facility

This allows funding to be made available at any time, should the borrower require it.

Traffic Commissioners currently accept this form of finance as proof of financial standing. They also allow an overdraft facility to be held in names other than the licence-holder, provided it is accompanied by a statutory declaration that the specified level of credit is available to the applicant(s). A declaration is required by the provider that the facility is available and the Traffic Commissioner must be notified if it ceases to be available.

As now, the amount of credit that can be used as proof of financial standing, should only be the difference between the average balance in the account and the overdraft limit.

Credit facility

Similar to an overdraft facility, this allows businesses to make purchases up to a specified limit. Traffic Commissioners currently accept this form of finance as proof of financial standing. Again, they also allow a credit limit to be held in names other than the licence-holder, provided it is accompanied by a statutory declaration that the specified level of credit is available to the applicant(s).

As now, the amount of credit that can be used as proof of financial standing, should only be the difference between the average credit drawn down and the overall credit limit.

Invoice Finance agreement

This allows businesses to draw down the value of unpaid invoices from a factoring company, who then recover the payment from the customers of the business, less their fee.

Traffic Commissioners currently accept this form of finance as proof of financial standing, providing it is accompanied by a signed agreement from the finance firm in which the finance provider agrees to retain the appropriate amount of money required to meet the definition of financial standing.

Annex B

Who can certify annual accounts and opening balances

"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

2. Association of Chartered Certified Accountants (ACCA)

www.accaglobal.com

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

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

2. Association of International Accountants (AIA)

www.aiaworldwide.com

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

www.cipfa.org.uk

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

www.icaew.com

5. Institute of Chartered Accountants in Ireland (ICAI)

www.icae.ie

6. Institute of Chartered Accountants of Scotland (ICAS)

www.icas.org.uk

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 statutory auditors. The register is available at:

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.

If the check via (a) or (b) above – and any further information or evidence provided by the person concerned - does not identify the individual – the accounts will not meet the requirements of the Regulation and will not be accepted as proof of financial standing.

CHAPTER 3

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

Contents

- Introduction
- How is the professional competence requirement changing?
 - The Certificate of Professional Competence
 - Third-party qualifications
 - Grandfather rights
- Effect on standard national operator licensing
- Other CPC provisions
- Questions

Introduction

1. Under the existing EC Directive, all standard licence holders need to specify a transport manager (an individual who must be properly qualified). Currently, this qualification can be met in three ways:
 - Passing an examination – the Certificate of Professional Competence (CPC) – run by an examining body¹¹ appointed for that purpose by the Secretary of State for Transport. Currently, applicants can choose whether to obtain a qualification in national operations only, or both national and international operations.
 - Obtaining one of a number of specific qualifications that offer an exemption from the existing certificate of professional competence examination. For example, these include - Fellow (FCILT) or Chartered Member (CMILT) of the Chartered Institute of Logistics and Transport by examination.

¹¹ Currently Oxford, Cambridge and RSA Examinations.

- By claiming 'grandfather rights', if they were a practising transport manager before 1975 (goods) and 1978¹² (PSV).
2. Under existing EC law, national and international certificates of professional competence issued since March 1992 can be used as proof of professional competence in other member states, and vice versa.

How is the professional competence requirement changing?

3. As a general principle, all transport managers will need to prove they are of good repute. For professional competence, taking the above bullets in turn:

Bullet 1 – the Certificate of Professional Competence

4. Under the new Regulation, the prime method of proving professional competence remains the Certificate of Professional Competence (CPC). Applicants must continue to pass an examination testing knowledge in the specific subject areas listed in Annex 1 of the Regulation. There are only a few differences between this list and the areas of knowledge listed in Annex I of the existing Directive. The Annex to the Regulation has updated references to specific legislation on drivers' hours and dangerous goods and includes a requirement that the CPC holder must be able to implement procedures to properly secure goods.
5. The Department has considered the provision of the CPC examination after December 2011. It is proposed that instead of continuing to appoint a single awarding body to arrange the examination (currently OCR), more than one body should be allowed to run examinations and award the CPC - subject to each body going through a formal approval process to satisfy the Department that they are able to run the CPC examination properly. We aim to minimise costs as well as maximising the opportunities for candidates to sit the examination. The Department is still developing the new arrangement with industry and other stakeholders. Further details will be published as soon as possible.
6. The Regulation also requires all new CPC examinations and their third-party equivalents to test knowledge in both national and international operations. This means that the national CPC will be abolished from 4 December 2011. However, the Regulation allows national CPCs issued before that date to remain valid indefinitely in that member state and holders wishing to update to an international CPC will continue only to be required to pass an additional international module of the CPC examination.

¹² It also needed to be gained (a) at any time in the period 1 January 1970 to 31 December 1974; or (b) over a period or periods that add up to at least two years between 1 January 1975 and 31 December 1979.

Bullet 2 – third-party qualifications

7. Under the new Regulation, individual member states may continue to allow third-party qualifications. The Department proposes to allow those with an existing third-party exemption to continue to be able to use the exemption.
8. The proposal outlined in paragraph 5 above would allow existing third-party exemption providers to become CPC awarding bodies in their own right, or to work as a training body with an approved awarding body. Therefore, it is proposed that after December 2011, no new third-party exemptions will be allowed - as the exempting bodies can be fully integrated into the CPC system. In practical terms, this means that the only way for **new** transport managers to prove professional competence after December 2011 will be via a CPC examination.

Bullet three – ‘Grandfather rights’

9. As with third-party qualifications, the Regulation allows individual member states to decide whether to continue to allow a ‘grandfather rights’ exemption from the need for qualification by examination. The Department proposes to continue to allow grandfather rights for national and international licences. However, the new Regulation changes the rules on how grandfather rights can be claimed. Under the new rules, it can only be granted to those individuals who can provide proof that they have ‘continuously managed’ a road haulage undertaking or a road passenger transport undertaking in one or more Member States for the period of 10 years before 4 December 2009.
10. However, Traffic Commissioners do not keep historical records of what operators each transport manager has worked for in the past and for how long. Therefore, the Department proposes granting grandfather rights should only be available to those who can provide satisfactory proof in either of two ways:
 - They have been listed as a transport manager on the same O-licence continuously for ten years before 4 December 2009; or
 - For those that cannot meet the above test, they provide signed declarations from previous operators that they have worked for (and been listed on the O-licence) as a transport manager, covering the required ten-year period.
11. However, the Department believes that an appropriate balance needs to be struck between allowing professional competence to be proved in this way, whilst ensuring that those claiming it have the required up-to-date knowledge to undertake transport operations in a safe and professional manner. In view of this, we propose not to allow new claims of grandfather rights beyond 4 December 2013. After this date, we consider that it is reasonable to assume that required knowledge will not

be up to date and that other evidence of professional competence (by examination) is necessary. This means, in practice, that after 4 December 2013, a transport manager would not be able to enter the industry and claim the '10-year exemption' from the need to hold a CPC qualification. They would need to pass a CPC exam.

- 12.** There is also the issue of whether Traffic Commissioners should accept declarations from operators that no longer hold an O-licence of their own. Again, the Department believes a balance is required to allow a reasonable degree of flexibility – considering the evidence is required as far back as 1999 – whilst acknowledging the risk that those without a current operators licence may have little incentive to tell the truth. Traffic Commissioners will need to determine, on a case by case basis, whether to accept the evidence provided. However, it is suggested that declarations should not generally be accepted from previous operator licence holders that have had their licences suspended or withdrawn on good repute grounds (i.e. where their professionalism and honesty are in doubt).
- 13.** Those who cannot meet either of the requirements in paragraph 10 above will need to regain recognised professional competence by qualification by December 2011. This would be via either a valid CPC (National if held when the Regulation enters into force or International if not), or a recognised third-party examination. As for any operators affected where an existing transport manager with grandfather rights can no longer establish professional competence under the 10-year rule, the new Regulation allows the operator, subject to the discretion of the Traffic Commissioner, to be given time of up to six months to employ a properly qualified transport manager.
- 14.** Another issue is how those transport managers qualifying for grandfather rights prove to their employer (and subsequent employers) that they have this exemption. The Department believes that two options are available:

 - a. Traffic Commissioners keep a master list and each employer checks with them when a transport manager applies for a job with them; or
 - b. Traffic Commissioners keep a master list but also issue each qualifying transport manager with a "grandfather rights" certificate (up to 4 December 2013).
- 15.** The Department believes that option (b) above may be the more cost-effective for Traffic Commissioners and the industry - because it would be a one-off exercise that would not place an on-going burden for operators to check with the Commissioners every time they employ a new transport manager.

Effect on standard national operator licensing

- 16.** Under the new Regulation, Standard National licences can continue to be issued after the Regulation enters into force in December 2011 and existing ones will remain valid. However, from 4 December 2011 onwards, all standard national licence holders must either have a Transport Manager with:
- a. An international CPC.
 - b. A national CPC obtained before 4 December 2011;
 - c. Entitlement to the exemption from the CPC examination under the 10-year (grandfather rights) rule (for either or both national or international operations); or
 - d. An existing third-party qualification issued before 4 December 2011.

Other CPC provisions

- 17.** The Regulation also contains a number of powers that enable individual Member States to introduce a range of additional policies relating to the CPC regime. These include:
- Appointing the bodies that provide training for the CPC examination.
 - Requiring CPC retraining at 10-year intervals and retraining for those that have not been an active transport manager in the last five years.
 - Allowing Traffic Commissioners to require individual transport managers to re-sit CPC examinations.
 - Introducing an oral element to the CPC examination.
- 18.** The Department believes that it is not necessary to pursue implementation of these policies, as they are not mandatory, would not address any existing deficiencies or shortcomings in the current CPC arrangements, and would impose additional burdens on training bodies, enforcement authorities and operators.

Questions

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

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

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

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?

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

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

CHAPTER 4

ESTABLISHMENT AND OTHER ISSUES

Contents

Establishment of operators

- Introduction
- PO Box addresses and third-party administrators
- Storage of core business documents
- Possessing vehicles

Extending the scope to non-commercial operators and those with a main occupation other than road passenger transport

Increasing the maximum fine for operating without a valid PSV licence

Increasing the fine for not declaring offences on Goods Vehicle and PSV Licence Applications

Questions

ESTABLISHMENT OF OPERATORS

Introduction

1. Under existing EC and domestic legislation, to obtain and keep an operator's licence (O-licence), operators must have an operating centre that satisfies the Traffic Commissioner that they have enough parking for their vehicles. This basic requirement will not change under the new Regulation. However, there are three areas where there will be some changes to current practice. These are explained below.

PO Box addresses and third-party administrators

2. The current application form for a goods or bus/coach O-licence requires the operator only to provide a correspondence address where they can be contacted. This can be anything from the address of registered

offices, the operating centre address (if this is the operator's sole premises) or a PO Box address.

3. However, the new Regulation requires all operators to be able to prove that they are properly established by having premises. Therefore, applicants for O-licences will, as now, be asked to provide a correspondence address and the address(es) of their operating centre(s) on the application form. To ensure, as the Regulation requires, that the establishment relates to actual premises, the use of PO Box addresses will no longer be permitted. Some O-licences also have the address of a third party that administers the O-licence on behalf of the operator. Neither of these forms of address provide the physical location of premises – which is required by the Regulation to prove stable establishment in a Member State. Therefore, before the Regulation comes into force, existing operators who have a PO Box address or the address of a third-party administrator will be contacted and asked to supply a place of business address of the operator instead, which may include a registered office.

Storage of core business documents

4. The new Regulation also requires operators to have premises where they keep core business documents such as:
 - Accounting documents
 - Personnel management documents
 - Data on driving time and rest
5. We would welcome views on whether the addresses of these premises where these documents are kept will be different from the correspondence address and operating centre(s) addresses already supplied as part of the O-licensing application process. This feedback is important, because if it suggests this is not the case, we would need to consider whether to make provision for it – e.g. by capturing the additional addresses on the operator licence application form for this purpose.
6. The new Regulation also allows the Secretary of State to require other documentation to be kept at these premises and we would welcome views on whether operators should be required to do so – for example, maintenance records, company records, driver defect reports.

Possessing vehicles

7. Under current EC and domestic legislation, an operator's licence can be granted or held by a person or organisation that does not possess any vehicles. This practice is no longer permitted under the new Regulation. From 4 December 2011, all existing and future goods and bus/coach

operators will be required to have at least one vehicle registered or in circulation in the UK.

8. However, the Regulation allows individual Member States to decide whether to require operators to have at least one vehicle registration mark (VRM) specified on the O-licence¹³. The Department does not propose to do this. Instead, it proposes that the requirements of the Regulation in this regard should be met in two ways:
- The O-licence application form will include a declaration that the licence-holder must be able to prove at all times that they have at least one vehicle that meets the requirements of the Regulation – i.e. that it is either wholly owned, or held under a hire-purchase, hire/leasing arrangement or other type of formal arrangement. Informal arrangements to hire or borrow a vehicle will not be sufficient.
 - Traffic Commissioners will be able to request proof of the arrangements in the bullet above at any time after the licence has been issued – as a part of existing compliance monitoring. Failure to prove these arrangements at any time will be considered a breach of the requirements of the Regulation and Traffic Commissioners will be able to take enforcement action.

EXTENDING THE SCOPE TO NON-COMMERCIAL OPERATORS AND THOSE WITH A MAIN OCCUPATION OTHER THAN ROAD PASSENGER TRANSPORT

9. For passenger transport operators, only vehicles constructed and equipped to carry more than 9-persons, including the driver, are within the scope of the new Regulation. The Regulation does not apply to undertakings engaged in passenger carrying services exclusively for non-commercial purposes or for those which have a main occupation other than passenger transport operator, unless provided for in national law¹⁴; we do not intend to extend the scope of the Regulation.
10. This will exclude PSV Restricted licence holders, who may operate a vehicle for carrying less than 9-persons, or for carrying between 9 and 16-persons, providing vehicles are not used as part of a passenger transport business [this could include hotel shuttle buses, for example]. We view this as an important step to maintaining proportionate implementation of the Regulation, as by their nature the majority of PSV Restricted licence holders are not likely to operate international journeys from the UK and thus minimises administrative burdens. In addition, the domestic requirements for financial standing for PSV Restricted licence

¹³ Although the VRM of goods vehicles operated for more than one month are currently required to be specified on the O-licence, PSV operators are not required to do so.

¹⁴ See article 1.4(b) of the Regulation.

holders are much lower than those proposed by the Regulation, and this will therefore ensure that the costs of operating under this type of licence remains balanced.

11. Community transport operators, operating exclusively for non-commercial purposes, will also be outside the scope of the Regulation and this is consistent with the Government's aim of maintaining lesser administrative and cost burdens for charity and voluntary groups.

INCREASING THE MAXIMUM FINE FOR OPERATING WITHOUT A VALID PSV LICENCE

12. Under existing legislation, operators convicted of operating vehicles without a valid operators' licence are subject to a fine. However, the level of this fine is different for goods vehicles and PSVs. The current level for goods vehicles is level 5 on the 'standard scale'¹⁵. This equates to a fine of £5,000. However, the fine for a similar offence for a PSV vehicle is only level 4. This is a fine of only £2,500.
13. Although the new Regulation repeats the provision in the current EC Directive that penalties must be effective, proportionate and dissuasive, we can see no justification for the fine for PSVs being 50% of a similar fine for operating a goods vehicle. Both offences are equally serious and pose very serious road safety implications. Therefore, the additional deterrent effect of increasing the fine will help further to minimise illegal operation. Given the consequences should a PSV suffer a serious accident because the requirements of O-licensing are not being complied with, we believe that such an increase is justified to bring the PSV fine in line with that for goods vehicles.

INCREASING THE FINE FOR NOT DECLARING OFFENCES ON GOODS VEHICLE AND PSV LICENCE APPLICATIONS

14. Following on from paragraphs 12 and 13 above, the maximum fine for a conviction for operating without a goods vehicle operators' licence is £5,000 (Level 5 on the standard scale – see footnote 15). However, failure to declare notifiable convictions¹⁶, either when the licence is granted or at any time thereafter, only attracts a maximum fine of £2,500 (level 4 on the standard scale). This apparent disparity can be viewed in two ways:
 - a. The two fines should be the same – because operating without an O-licence is the same as obtaining one by false declaration (if the

¹⁵ S.37 of the Criminal Justice Act 1982

¹⁶ Listed in Schedule 2 of the Goods Vehicle (Licensing of Operators) Act 1995

offences not declared would have led to the licence application being refused); or

- b. The lower fine could be justified if it were considered better to encourage all operators to be within the system, and therefore subject to risk rating, roadside checks, enforcement action etc, than operating illegally outside it.

15. It is not a forgone conclusion that notifying a notifiable conviction will result in an O-licence application being refused or an existing O-licence withdrawn. That is entirely a matter for a Traffic Commissioner to determine in individual cases. However, we would welcome views on whether the maximum penalty on conviction for those that knowingly fail to comply with this requirement should be increased to £5,000.

16. If the maximum fine for operating a PSV vehicle without an O-licence is increased to £5,000 (see paragraphs 12 and 13 above) the same disparity would exist. So we welcome views on whether, if the PSV fine is increased to £5,000, the fine for non-disclosure of convictions should follow suit as well.

Questions

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

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?

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

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

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?

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?

Q7. 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?

CHAPTER 5

NATIONAL REGISTERS

Contents

- Introduction
- Serious infringements
- Data contained in the register
- Questions

Introduction

1. The new Regulation places greater emphasis on improving the co-operation between the licensing authorities in each member state and seeks to improve the flow of information between them about operators and transport managers. To help this, the Regulation requires each member state to do a number of things:
 - Establish an electronic national register of all their licensed operators and transport managers by 4 December 2011¹⁷.
 - Ensure the register contains certain minimum items of data;
 - Ensure interconnection of their registers so that individual member states can share that information with licensing authorities in other member states.
2. The Traffic Commissioners already have an electronic database of operators – the Operator Licensing Business System (OLBS), implemented in 2001 that captures much of the operator data that would be required by the national register from the licence application form – name, address etc – as well as other details, such as (for Goods Vehicles) the vehicle registration number of each vehicle specified by the operator as being operated under the licence (see below). However, there are also a number of additional requirements in the new Regulation where individual member states have scope to decide how or whether to implement them, and these are set out below.

Serious infringements

¹⁷ A list of the data that must be included by each member state in their national register and how we propose to apply them is at the **Annex to this chapter**

3. One of the items of data that the new Regulation says must be included as part of the national register requirement is the number, category and type of serious infringements that have resulted in a conviction or penalty during the last 2 years. This data is not currently captured electronically by Traffic Commissioners. However, the Regulation does allow Member States, until 31 December 2015, to include, as part of the national register requirement only the most serious infringements listed below:
- Exceeding the maximum 6-day or fortnightly driving time limits by margins of 25% or more.
 - Exceeding, during a daily working period, the maximum daily driving time limit by a margin of 50% or more without taking a break or without an uninterrupted rest period of at least 4.5 hours.
 - Not having a tachograph and/or speed limiter, or using a fraudulent device able to modify the records of the recording equipment and/or the speed limiter or falsifying record sheets or data downloaded from the tachograph and/or the driver card.
 - Driving without a valid roadworthiness certificate if such a document is required under Community law and/or driving with a very serious deficiency of, inter alia, the braking system, the steering linkages, the wheels/tyres, the suspension or chassis that would create such an immediate risk to road safety that it leads to a decision to immobilise the vehicle.
 - Transporting dangerous goods that are prohibited for transport or transporting such goods in a prohibited or non-approved means of containment or without identifying them on the vehicle as dangerous goods, thus endangering lives or the environment to such extent that it leads to a decision to immobilise the vehicle.
 - Carrying passengers or goods without holding a valid driving licence or carrying by an undertaking not holding a valid Community Licence.
 - Driving with a driver card that has been falsified, or with a card of which the driver is not the holder, or which has been obtained on the basis of false declarations and/or forged documents.
 - Carrying goods exceeding the maximum permissible laden mass by 20% or more for vehicles the permissible laden weight of which exceeds 12 tonnes, and by 25% or more for vehicles the permissible laden weight of which does not exceed 12 tonnes.
4. The new Regulation requires each national register to be established and interconnected across the EC by 31 December 2012, and adoption of the this flexibility would provide Traffic Commissioners with a further three years to include the other serious infringements data not listed above. Given the amount of work required to establish the UK national register and interconnect it with Europe, we propose to take advantage

of this leeway. This will reduce the administrative burden of implementing national registers by Traffic Commissioners and VOSA, and therefore costs passed on to industry through fees.

Data contained in the register

5. A Commission Decision¹⁸ has specified minimum requirements for the data to be entered. Our interpretation of how this applies for the purpose of the UK register is set out in the **Annex**.

Questions

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?

Q2. 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?

¹⁸ Commission Decision of 17 December 2009 on minimum requirements for the data to be entered in the national electronic register of road transport undertakings (notified under document C(2009) 9959) (Text with EEA relevance)

Annex

DATA THAT WILL FORM PART OF THE UK NATIONAL REGISTER, OUR INTERPRETATION AND PROPOSED DATA SOURCES

Data category	Data item (as stipulated by the Regulation and Commission Decision of 17 November 2009)	Interpretation	Proposed data source
Transport Undertaking	Name	Will not include trading name	Operator Licence Business System
	Legal form	Sole trader, Partnership, Limited Company, Public Authority	Operator Licence Business System
Address	Address		Operator Licence
	Postal code		Operator Licence
	City	City or town	Operator Licence
	Country code	UK	Operator Licence

Data category	Data item (as stipulated by the Regulation and Commission Decision of 17 November 2009)	Interpretation	Proposed data source
Authorisation	Type Declaration of: 'Community licence for passenger transport' 'National licence for passenger transport' or: 'Community licence for goods transport' 'National licence for goods transport'		Operator Licence Business System
	Serial number of Community licence	All community licences will have a 5 year expiry date, as now.	Operator Licence Business System
	Start date of Community licence	The start date of the current community licence – not the date when the operator licence was first granted.	Operator Licence Business System
	Expiry date of Community licence	Expiry date of current community licence	Operator Licence Business System
	Number of vehicles covered	The maximum number authorised for use under the licence.	Operator Licence Business System
	Vehicle registration number (not mandatory)	Propose not to include this data in the national register, but will still be held on OLBS (see above)	-

Data category	Data item (as stipulated by the Regulation and Commission Decision of 17 November 2009)	Interpretation	Proposed data source
	Authorisation status Declaration of 'Active' 'Suspended' 'Withdrawn' 'Expired' 'Lost/stolen' 'Annulled' 'Returned'		Operator Licence Business System
	Date of withdrawal of the Community licence		Operator Licence Business System
	Date of suspension of the Community licence	The date of the start of the temporary withdrawal.	Operator Licence Business System
	Expiry date of suspension of the Community licence	Date of the end of the temporary withdrawal.	Operator Licence Business System
	Reason for suspension or withdrawal of the Community licence Declaration of: 'No effective and stable establishment' 'No appropriate financial standing' 'No requisite professional competence' 'Not of good repute' 'Other'	Items (1) to (4) would apply if the Community Licence is suspended or withdrawn because the operator didn't meet the O-licensing requirements; Item (5) would apply if the Community Licence is suspended or withdrawn as a result of infringements.	Operator Licence Business System
	Serial number of certified true copy of Community licence		Operator Licence Business System

Data category	Data item (as stipulated by the Regulation and Commission Decision of 17 November 2009)	Interpretation	Proposed data source
	Date of withdrawal of certified true copy		Operator Licence Business System
	Expiry date of withdrawal of certified copy		Operator Licence Business System
Legal representative of the undertaking (where appropriate)	First given name	This data item is related to the details of the transport manager rather than the undertaking itself. As TCs always require an identifiable TM, then giving an alternative legal representative would never be appropriate. Therefore, these fields will not be populated.	-
	Family name(s)		-
	Date of birth		-
	Place of birth		-
Transport Manager	First given name	This will make provision for multiple first names.	Operator Licence Business System
	Family name(s)	Surname (including hyphenated surnames)	Operator Licence Business System
	Date of birth		Operator Licence Business System
	Place of birth	City, town or village where they were born as quoted on birth certificate	Operator Licence Business System

Data category	Data item (as stipulated by the Regulation and Commission Decision of 17 November 2009)	Interpretation	Proposed data source
	Number of certificate of professional competence	These can be serial numbers on grandfather rights certificates (if adopted - see Chapter 3), third party qualifications or the CPC certificate itself.	Operator Licence Business System
	Date of issue of the certificate of professional competence	This is the date as printed on the certificate itself.	Operator Licence Business System
	Country of issue of the certificate of professional competence		Operator Licence Business System
Serious infringement	Category	As defined by the European Commission	VOSA enforcement, licensing authority in other Member State or Police National Computer ¹⁹
	Type	As defined by the European Commission	VOSA enforcement, licensing authority in other Member State or Police National Computer ²⁰

¹⁹ Depending on nature of the infringement

²⁰ Depending on nature of the infringement

Data category	Data item (as stipulated by the Regulation and Commission Decision of 17 November 2009)	Interpretation	Proposed data source
	Date of infringement	Date of conviction or penalty issued	VOSA enforcement, licensing authority in other Member State or Police National Computer ²¹
	Date of check where infringement has been ascertained	Date of roadside check or inspection etc	VOSA enforcement, licensing authority in other Member State or Police National Computer ²²
	Member State in which infringement was ascertained		VOSA enforcement, licensing authority in other Member State or Police National Computer ²³
	Reason why loss of good repute is a disproportionate response	Text field populated from Traffic Commissioner decision.	Operator Licence Business System
Unfit Person	First given name	This would be the transport manager only	Operator Licence Business System
	Family name(s)	Surname (including hyphenated surnames)	Operator Licence Business System

²¹ Depending on nature of the infringement

²² Depending on nature of the infringement

²³ Depending on nature of the infringement

Data category	Data item (as stipulated by the Regulation and Commission Decision of 17 November 2009)	Interpretation	Proposed data source
	Date of birth		Operator Licence Business System
	Place of birth	City, town or village where they were born as quoted on birth certificate	Operator Licence Business System
	Number of certificate of professional competence	These can be serial numbers on grandfather rights certificates (if adopted - see chapter 3), third party qualifications or the CPC certificate itself.	Operator Licence Business System
	Date of issue of the certificate of professional competence	This is the date as printed on the certificate itself.	Operator Licence Business System
	Country of issue of the certificate of professional competence		
	Reason for declaration of unfitness Declaration of either: 'Infringement of national rules' 'Infringement of Community rules'		Operator Licence Business System

Data category	Data item (as stipulated by the Regulation and Commission Decision of 17 November 2009)	Interpretation	Proposed data source
	Current rehabilitation measure Declaration of either: 'Repeat training' 'Additional training' 'Relicensing' 'Additional conditions on licence' 'Other'	As determined by the Traffic Commissioner in individual cases	Operator Licence Business System
	Start date of declaration of unfitness		Operator Licence Business System
	End date of declaration of unfitness	As determined by the Traffic Commissioner in individual cases	Operator Licence Business System

Consultation Questions

A summary of the questions posed in each of the chapters is contained the response form at **Annex 2**.

What will happen next

A summary of responses, including the next steps will be published after the consultation ends and be posted on the DfT website. Paper copies will be available on request.

Question and Answer Brief

Below is a list of frequently asked questions about these proposals. If you still have questions after you have read this section please contact;

Steve Blackmore

EC Road Transport Package Consultation

Department for Transport

Zone 2/14

Great Minster House

76 Marsham Street

LONDON

SW1P 4DR

email: steve.blackmore@dft.gsi.gov.uk

Telephone: 020 7944 3339 Fax: 020 7944 6523

QUESTION AND ANSWER BRIEF

What about the role of the traffic commissioners?

In addition to the issues raised as part of this consultation exercise, much of the detailed implementation of the new Regulation is a matter for the Traffic Commissioners to determine when considering individual cases. The Senior Traffic Commissioner will also need to determine whether to exercise his powers under Part 1 of the Local Transport Act 2008 to issue statutory directions and guidance that provides further granularity on how the new requirements of the Regulation are addressed by the Traffic Commissioners when exercising their statutory functions.

How will the regulation be applied in Northern Ireland and Gibraltar?

The Regulation covers the United Kingdom (i.e. England, Wales, Scotland, Northern Ireland and Gibraltar). However, the application of the Regulation in Northern Ireland and Gibraltar is a matter for their Government. This consultation exercise therefore only covers England, Scotland and Wales.

Why doesn't the consultation also cover the existing vehicle maintenance requirements , the environmental impact of operating centres and restricted operator licensing?

These are domestic requirements that are not covered by the European rules. The Department will be undertaking a review of these requirements in due course, after the Regulation is implemented.

IMPACT ASSESSMENT

The Impact Assessment can be found at **Annex 3**. When responding to the consultation, please comment on the analysis of costs and benefits, giving supporting evidence wherever possible.

Please also suggest any alternative methods for reaching the objective and highlight any possible unintended consequences of the policy, and practical enforcement or implementation issues.

THE CONSULTATION CRITERIA

The consultation is being conducted in line with the Government's Code of Practice on Consultation. The criteria are listed at Annex 1, a full version of the Code of Practice on Consultation is available on the Better Regulation Executive web-site at:

<http://www.bis.gov.uk/files/file47158.pdf>

If you consider that this consultation does not comply with the criteria or have comments about the consultation process please contact:

Giada Covallero
Consultation Co-Ordinator

Department for Transport
Zone 2/25
Great Minster House
London SW1P 4DR

Email address consultation@dft.gsi.gov.uk

ANNEXES

Consultation criteria

1. When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

2. Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

3. Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4. Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5. The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6. Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7. Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

ANNEX 2

Consultation Response Form

Consultation on:

EC Road Transport Package

PART 1 - Information about you

Name	
Address	
Postcode	
Email	
Company Name or Organisation (if applicable)	
Please tick one box from the list below that best describes you/your company or organisation.	
<input type="checkbox"/>	Small to Medium Enterprise (up to 50 employees)
<input type="checkbox"/>	Large Company
<input type="checkbox"/>	Representative Organisation
<input type="checkbox"/>	Trade Union
<input type="checkbox"/>	Interest Group
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Central Government
<input type="checkbox"/>	Police
<input type="checkbox"/>	Member of the public
<input type="checkbox"/>	Other (please describe):
If you are responding on behalf of an organisation or interest group how many members do you have and how did you obtain the views of your members:	
If you would like your response or personal details to be treated confidentially please explain why:	

YOUR COMMENTS

PART 2

IMPORTANT: Although we are seeking views on any aspect of this consultation document, we would particularly appreciate your responses to the key questions outlined below.

CHAPTER 1 – TRANSPORT MANAGERS

Chapter 1 – Transport Managers	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Q.1 Are the new definitions of ‘internal’ and ‘external’ transport manager clear? Is the 4/50 rule for ‘external’ transport managers understood?		
Please explain your reasons or add any additional comments you wish to make:		

Chapter 1 – Transport Managers	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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?		
Please explain your reasons or add any additional comments you wish to make:		

Chapter 1 – Transport Managers	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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?		

Please explain your reasons or add any additional comments you wish to make:

Chapter 1 – Transport Managers

Yes

No

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

Please explain your reasons or add any additional comments you wish to make:

Chapter 1 – Transport Managers

Yes

No

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?

Please explain your reasons or add any additional comments you wish to make:

Chapter 1 – Transport Managers

Yes

No

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

Please explain your reasons or add any additional comments you wish to make:

CHAPTER 2 – FINANCIAL STANDING

Chapter 2 – Financial Standing	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Q.1 Do you agree that the no further guidance is necessary on completing certified annual accounts?		
Please explain your reasons or add any additional comments you wish to make:		

Chapter 2 – Financial Standing	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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?		
Please explain your reasons or add any additional comments you wish to make:		

Chapter 2 – Financial Standing	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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?		

Please explain your reasons or add any additional comments you wish to make:

Chapter 2 – Financial Standing

Yes

No

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

Please explain your reasons or add any additional comments you wish to make:

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

Chapter 3 – CPCs, Third-Party Qualifications and Grandfather Rights

Yes

No

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

Please explain your reasons or add any additional comments you wish to make:

Chapter 3 – CPCs, Third-Party Qualifications and Grandfather Rights

Yes

No

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

Please explain your reasons or add any additional comments you wish to make:

Chapter 3 – CPCs, Third-Party Qualifications and Grandfather Rights

Yes

No

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?

Please explain your reasons or add any additional comments you wish to make:

Chapter 3 – CPCs, Third-Party Qualifications and Grandfather Rights

Yes

No

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?

Please explain your reasons or add any additional comments you wish to make:

Chapter 3 – CPCs, Third-Party Qualifications and Grandfather Rights

Yes

No

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?

Please explain your reasons or add any additional comments you wish to make:

Chapter 3 – CPCs, Third-Party Qualifications and Grandfather Rights

Yes

No

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

Please explain your reasons or add any additional comments you wish to make:

CHAPTER 4 – ESTABLISHMENT AND OTHER ISSUES

Chapter 4 – Establishment and Other Issues

Yes

No

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

Please explain your reasons or add any additional comments you wish to make:

Chapter 4 – Establishment and Other Issues

Yes

No

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?

Please explain your reasons or add any additional comments you wish to make:		

Chapter 4 – Establishment and Other Issues	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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		
Please explain your reasons or add any additional comments you wish to make:		

Chapter 4 – Establishment and Other Issues	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Q.4 Does the requirement to provide proof of possession of at least one vehicle cause problems? How might this be addressed?		
Please explain your reasons or add any additional comments you wish to make:		

Chapter 4 – Establishment and Other Issues	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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?		
Please explain your reasons or add any additional comments you wish to make:		

Chapter 4 – Establishment and Other Issues	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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?		
Please explain your reasons or add any additional comments you wish to make:		

Chapter 4 – Establishment and Other Issues	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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?		
Please explain your reasons or add any additional comments you wish to make:		

CHAPTER 5 – NATIONAL REGISTERS

Chapter 5 – National Registers	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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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?		
Please explain your reasons or add any additional comments you wish to make:		

Chapter 5 – National Registers	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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?	Please explain your reasons or add any additional comments you wish to make:	

ANNEX 3 – DRAFT IMPACT ASSESSMENT

Do you agree that the draft impact assessment accurately estimates expected costs and benefits from introducing these regulatory changes?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Please explain your reasons or add any additional comments you wish to make:		

Please send this completed form to: steve.blackmore@dft.gsi.gov.uk

or by post to:

EC Road Transport Package Consultation

Department for Transport

Zone 2/14

Great Minister House

76 Marsham Street

LONDON

SW1P 4DR

or by fax to: 020 7944 2459

The deadline for responses is: **17.00 on Friday 20 May 2011**

ANNEX 3

Draft Impact Assessment

Attached separately.

List of those consulted

Organisation

Administrative Justice and Tribunals Council

Agricultural Engineers Association

Alliance of Independent Retailers Ltd

Alliance of Small Firms and Self Employed People

Ambulance Services Association

Arriva Passenger Services PLC

Asset Based Finance Association

Association for Road Traffic Safety Management

Association of British Insurers

Association of Car Fleet Operators

Association of Chief Police Officers

Association of Chief Police Officers (Scotland)

Association of Independent Businesses

Association of Industrial Road Safety Officers

Association of International Couriers and Express Services

Association of Justices Chief Executive

Association of Magistrates' Officers

Association of Transport Co-ordinating Officers (ATCO)

Association of Vehicle Recovery Operators

Association of Local Bus Managers

Association of London Government
Association of Magistrates' Officers
Automobile Association (AA)
BRAKE
British Aggregates Association
British Air Transport Association
British Association of Removers
British Bankers Association (BBA)
Building Societies Association
British Cement Association
British Chambers of Commerce
British European Transport
British Independent Motor Trade Association
British Industrial Truck Association
British Institution of Traffic Education Research
British International Freight Association
British Parking Association
British Safety Council
British Vehicle Rental and Leasing Association
Building Societies Association (BSA)
Bus Users UK
Campaign for Better Transport
Chartered Institute of Logistics and Transport UK
Chemical Industries Association
Coach Operators Federation
Cold Storage & Distribution Federation

Commission for Integrated Transport
Community Transport Association
Confederation of British Industry
Confederation of Passenger Transport UK
Confederation of Passenger Transport Scotland
Confederation of Passenger Transport Wales
Consumers Association
Convention of Scottish Local Authorities
County Surveyors Society
County Road Safety Officers Association
Crown Offices and Procurator Fiscal Service
Crown Prosecution Service
Department for Business Enterprise and Regulatory Reform
Department of Environment for Northern Ireland
Disabled Persons Transport Advisory Committee
District Courts Association
Engineering Employers Association
Environmental Transport Association
Farmers Union of Wales
Federation of Environmental Trade Associations
Federation of Petroleum Suppliers
Federation of Small Businesses
Finance & Leasing Association
First Group PLC
Foreign and Commonwealth Office
Food and Drink Federation

Forestry Commission England
Forestry Commission Scotland
Forestry Commission Wales
Freight Transport Association
Guild of British Coach Operators
General Executive Council of the TGWU
Go Skills
Guild of British Coach Operators
Historic Commercial Vehicle Society
Home Office
HM Treasury
Information Commissioner
Institute of Advanced Motorists
Institute of Civil Engineers
Institute of HGV Driving Instructors
Institute of Highway Incorporated Engineers
Institution of Mechanical Engineers
Institute of Road Safety Officers
Institute of Transport Administration
Institute of Waste Management
International Road Freight Office
Justice Clerks Society
Law Society of Scotland
Local Government Association
Lothian Buses
London Councils

Magistrates Association
Merseyside Passenger Transport Authority
Ministry of Justice
Motor Insurers Bureau
Motorist Forum
Movers Institute c/o British Association of Removers
National Assembly for Wales
National Association of Agricultural Contractors
National Association of Funeral Directors
National Association of Local Councils
National Centre for Business and Sustainability
National Express Group
National Farmers Union
National Society for Clean Air & Environment Protection
National Traction Engine Trust
North West Regional Assembly
Office of Law Reform
Parliamentary Advisory Council for Transport Safety
Passenger Focus
Passenger Transport Executive Group
Petroleum Industries Association
Police Federation for England and Wales
Public Transport Consortium
Quarry Products Association
RAC
Rail Freight Group

Regional Transport Partnerships

Retail Motor Federation

Road Haulage Association

Road Operators' Safety Council

Road Roller Association

Road Safety Advisory Panel

Road Safety Council of Wales

Royal Society for the Prevention of Accidents

Rural Community Network

Scottish Courts Service

Scottish Environmental Protection Agency

Scottish Office

Showmen's Guild of Great Britain

Skills for Logistics

Small Business Service

Society of Motor Manufacturers and Traders

Society of Operations Engineers

The National Union of Rail, Maritime and Transport Workers (RMT)

The Pedestrian Association

The Union of Shop, Distributive and Allied Workers (USDAW)

The United Road Transport Union

Trades Union Congress (TUC)

The Traffic Commissioners

Transport and General Workers Union

Transport for London (TfL)

Tribunals Service

Tyne and Wear Passenger Transport Authority

UK Coal PLC

UK Petroleum Industry Association Ltd

Wales TUC

Welsh Local Government Association Ltd

Welsh Assembly Government

West Midlands Passenger Transport Authority