



SENIOR TRAFFIC COMMISSIONER

Statutory Document No. 3

TRANSPORT MANAGERS

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

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R Turfitt
Senior Traffic Commissioner

GUIDANCE

1. The Senior Traffic Commissioner for Great Britain issues the following Guidance under section 4C(1) of the Public Passenger Vehicles Act 1981 (“1981 Act”) and by reference to section 1(2) of the Goods Vehicles (Licensing of Operators) Act 1995 (“1995 Act”) to provide information as to the way in which the Senior Traffic Commissioner believes that traffic commissioners should interpret the law in relation to the requirements for and on transport managers.
2. A transport manager must be of good repute.¹ The Certificate of Professional Competence (CPC) must be appropriate for the type of licence being applied for. Only those persons who can fulfil the statutory requirements for having continuous and effective responsibility for the management of the transport operations of the business in so far as they relate to the carriage of goods or passengers (as defined below) can act as a transport manager. The transport manager retains legal responsibility regardless of whether their individual activities are delegated.

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

3. Standard licence holders and applicants for standard licences are required to meet the requirements of professional competence. Section 13(1) requires the applicant to satisfy the traffic commissioner that the requirements of section 13A and 13C are met. Section 13A contains a requirement that an applicant for a standard licence is professionally competent (in accordance with paragraphs 13 and 14A of Schedule 3).
4. A designated transport manager must meet the requirements of paragraph 14A as follows:
 - be a resident of the United Kingdom;
 - be of good repute (in accordance with paragraphs 1 to 5 of Schedule 3²);
 - be professionally competent (in accordance with paragraph 13 of Schedule 3³);
 - effectively and continuously manages the transport activities of the undertaking;
 - is not prohibited from acting as a transport manager by a traffic commissioner; and
 - in the case of an external transport manager, is not designated to act in that capacity for more than 4 operators or be responsible for more than 50 motor vehicles or such smaller number as the traffic commissioner considers appropriate.
5. Section 22(2)(a) and 22(2)(b) make it a condition of the licence for an operator to inform the traffic commissioner of any change within 28 days that would affect the fulfilment to be professionally competent and/or of any event which affects

¹ See Statutory Guidance and Statutory Directions on Good Repute and Fitness and Statutory Guidance and Statutory Directions on the Principles of Decision Making

² [2018/046 Mark Clinton](#) – a competent and reputable transport manager should be aware of these provisions

³ The Secretary of State’s powers to exempt an individual under paragraph 12 of Schedule 6, from the requirements of professional competence, apply for the purpose of light goods vehicle licences only - see paragraph 11 of Schedule 6

the requirements under section 13A or paragraph 14A of Schedule 3. The traffic commissioner then has discretion to consider a period of grace *up to* 6 months to find a replacement (and a further 3 months in the case of death or incapacity of the transport manager).

6. The statutory definition of “transport manager” in section 58, by reference to section 13A(5), means ‘an individual employed by an undertaking or, if that undertaking is an individual, that person or, where provided for, another individual designated by that undertaking by means of a contract, who effectively and continuously manages the transport activities of that undertaking’. Paragraph 14A of Schedule 3 refers to that person having a genuine link to the undertaking, such as being an employee, director, owner or shareholder or administering it.
7. Under paragraph 15 of Schedule 3 a traffic commissioner cannot make an adverse finding against an existing transport manager’s repute unless a notice has been properly served⁴ on that transport manager:
 - stating whether repute and/or professional competence is at issue;
 - setting out the nature of the allegations;
 - giving the transport manager 28 days from the date of service to make representations; and
 - stating that the transport manager is entitled to request an inquiry as provided in section 35.

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

8. Under paragraph 16(1) of Schedule 3, where a traffic commissioner finds that a transport manager has been convicted of a serious criminal offence or incurred a penalty for one or more serious infringements that would lead to a loss of good repute, in accordance with paragraph 5(2) the traffic commissioner must consider whether a finding that the person was no longer of good repute would constitute a disproportionate response and that consequently good repute is unaffected. Any such finding must be duly reasoned and justified; the reasons shall be recorded in the national register. If the traffic commissioner does not find that the loss of good repute would be disproportionate the conviction or penalty shall lead to a loss of good repute.
9. Under paragraph 16(2) of Schedule 3, where a traffic commissioner determines that a transport manager has lost their good repute, the traffic commissioner must order the person to be disqualified from acting as a transport manager. Whilst the disqualification is in force the person may not act as a transport manager in relation to any operator’s licence. The disqualification order can either be indefinite or for such period as the commissioner thinks fit.⁵
10. However, under paragraph 17 of Schedule 3 (as amended by The Goods Vehicles (Licensing of Operators) (Amendment) Regulations 2022), where a transport manager is disqualified the traffic commissioner who made the order

⁴ Deemed served on the date on which it would have been delivered in the ordinary course of post to the transport manager’s last known address, notwithstanding that it was returned as undelivered or was for any other reason not received by the transport manager. See Statutory Guidance and Statutory Directions on Operating Centres, Stable Establishment and Addresses for Service

⁵ See Statutory Guidance and Statutory Directions on Principles of Decision Making for suggested starting points

may cancel the order no earlier than one year, beginning with the day on which the order was made and only if the disqualified person has, after the order was made:

- passed the written examination referred to in paragraph 13(1)(a); or
- for no less than three months undertaken training a traffic commissioner considers appropriate.

11. A disqualification order can also be varied with the consent of the disqualified person, either upon application by the disqualified person or of the traffic commissioner's own volition and only after serving notice stating:

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

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

Passenger Carrying Vehicles Legislation: The Public Passenger Vehicles Act 1981

12. Regulation 5 of the Road Transport Operator Regulations 2011 states that a standard licence granted under the 1981 Act constitutes an authorisation to engage in the occupation of road transport operator for the purposes of Regulation (EC) No 1071/2009 in the capacity of road passenger transport operator.

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

14. A designated transport manager must, by reference to section 82 of the 1981 Act⁶, meet the requirements of Article 4 as follows:

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

15. Section 17(3)(b) makes it a condition of the licence for an operator to inform the traffic commissioner of any change within 28 days. The traffic commissioner then

⁶ "transport manager" has the same meaning as in Regulation (EC) No 1071/2009

has discretion to consider a period of grace *up to* 6 months (and a further 3 months in the case of death or incapacity) to find a replacement.

- 16.** The statutory definition of “transport manager” in section 82 (as amended by Regulation (EC) No 1071/2009) means ‘a natural person employed by an undertaking or, if that undertaking is a natural person, that person or, where provided for, another natural person designated by that undertaking by means of a contract, who effectively and continuously manages the transport activities of that undertaking’. Article 4(1) of Regulation (EC) No 1071/2009 refers to that person having a genuine link to the undertaking, such as being an employee, director, owner or shareholder or administering it. It also refers to Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009, amending Regulation (EC) No 561/2006, on common rules for access to the international market for coach and bus services.
- 17.** Under paragraph 7A of Schedule 3 of the Act a traffic commissioner cannot make an adverse finding against a transport manager’s repute in respect of an existing licence, unless a notice has been properly served⁷ on that transport manager:
- stating whether repute and/or professional competence is at issue;
 - setting out the nature of the allegations;
 - giving the transport manager 28 days from the date of service to make representations; and
 - stating that the transport manager is entitled to request an inquiry as provided in section 54.

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

- 18.** Under paragraph 7B(1) of Schedule 3 (as amended by Article 6(2) of Regulation (EC) No 1071/2009), where a traffic commissioner finds that a transport manager has been convicted of a serious criminal offence or incurred a penalty for one or more serious infringements that would lead to a loss of good repute, the traffic commissioner must consider whether a finding that the person was no longer of good repute would constitute a disproportionate response and that consequently good repute is unaffected. Any such finding must be duly reasoned and justified, and the reasons shall be recorded in the national register. If the traffic commissioner does not find that the loss of good repute would be disproportionate the conviction or penalty shall lead to a loss of good repute.
- 19.** Article 14(1) of Regulation (EC) No 1071/2009 provides that where a transport manager loses good repute in accordance with Article 6 (as set out above) the traffic commissioner shall declare that transport manager unfit to manage the transport activities of an undertaking. Article 14(2) provides that unless and until a rehabilitation measure is taken in accordance with the relevant provisions of national law the CPC shall no longer be valid in any Member State.

⁷ Deemed served on the date on which it would have been delivered in the ordinary course of post to the transport manager’s last known address, notwithstanding that it was returned as undelivered or was for any other reason not received by the transport manager. See Statutory Guidance and Statutory Directions on Operating Centres, Stable Establishment and Addresses for Service

20. Under paragraph 17B(2) of Schedule 3 (as amended by the Road Transport Operator Regulations 2011), where a traffic commissioner determines that a transport manager has lost their good repute, the traffic commissioner must order the person to be disqualified from acting as a transport manager. Whilst the disqualification is in force the person may not act as a transport manager for any road transport undertaking and their CPC is not valid. The disqualification order can either be indefinite or for such period as the commissioner thinks fit.
21. However, under paragraph 7C of Schedule 3 (as amended by the Road Transport Operator Regulations 2011), where a transport manager is disqualified the traffic commissioner who made the order may, at any time, cancel the order or, with the consent of the disqualified person, vary the order, either upon application by the disqualified person or of the traffic commissioner's own volition and only after serving notice stating:
- the intention to vary the measures specified;
 - that the person is entitled to make representations within 28 days from the date of notice; and
 - that the person is entitled to request a hearing.

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

Case Law

22. This Guidance may be subject to decisions of the higher courts and to subsequent legislation. The Senior Traffic Commissioner has extracted the following principles and examples from existing case law.
23. The Upper Tribunal has emphasised the: *“need for a proper, active transport manager is not a mere formality but a serious requirement.”*⁸ It follows that a transport manager should not be one in name only but should actively discharge their duty to exercise continuous and effective management. Transport managers should be able to supply a suitable certificate of qualification.⁹ This can be by way of examination or entitlement (formerly “Grandfather Rights” now “Acquired Rights”). Transport managers need to also be of good repute and should be prepared to supply a certificate or equivalent document issued by a competent authority from the EU Member State in which they used to reside.¹⁰ It is incumbent upon the operator to ensure that any appointed transport manager has the continuing ability and determination to give full and practical application to the statutory duties.¹¹
24. Continuous and effective responsibility means just that. An applicant or operator can be taken to be aware of the various guidance documents issued on behalf of the Senior Traffic Commissioner.¹² When nominating an individual as a transport manager it will be necessary to show that the person concerned will be able to exercise that level of responsibility. The traffic commissioner must be in a position

⁸ 2017/023 Robert Arrowsmith trading as Arrowhead Contractors

⁹ [2004/021 Carway Haulage Ltd](#). All new CPC qualifications will equip the holder to exercise effective management of international operations. If a standard licence operator is contemplating international work then the operator must ensure that the nominated CPC holder either holds a new style CPC or an old style international qualification.

¹⁰ [2021/561 Pawel Damian Kaptur and KPD Haulage Ltd](#)

¹¹ [2000/018 Euroline Transport Ltd](#) and [2008/315 L C Mistry](#)

¹² [2012/030 M G M Haulage & Recycling Ltd](#)

to assess how much time that individual will devote to the business in question, what other demands that person will have on their time and what contractual relationship exists between the individual and the applicant/operator.¹³ A transport manager should be able to show that, however infrequently vehicles return to the operating centre, he or she is able to and does exercise continuous and effective management of the vehicles on a day to day basis. The requirements of the legislation¹⁴ are unlikely to be satisfied by a transport manager who lives abroad¹⁵ or even at the opposite end of the country.¹⁶

- 25.** A transport manager must always be more than just a transport manager in name.¹⁷ A transport manager risks their reputation¹⁸ if they find themselves in this position. If a transport manager finds them-self overridden by the operator or their agent to the point at which the transport manager no longer has the requisite continuous and effective responsibility, the transport manager must first notify the operator in writing and then, if the matter is not resolved, is expected to take appropriate action.¹⁹ In certain cases this may even include resignation, rather than remain nominated and attempt to carry on their duties when being expressly prevented from doing so by their employer. The transport manager can exercise this responsibility alone or with the assistance of others.²⁰ Persons who control an entity which operates heavy goods or public service vehicles must have sufficient knowledge to exercise proper oversight.²¹ The ultimate responsibility for supervising maintenance compliance rests on the operator and failures by employees or outside contractors is a matter for mitigation only.²² The Goods Vehicle (Licensing of Operators) Act 1995 and Regulation (EC) No 1071/2009 enable traffic commissioners to take action against the individual transport manager alone.
- 26.** A transport manager should also think carefully where there is an attempt to reduce the hours worked from those declared on the application. The transport manager should ensure that s/he has enough time so as to be able to comply with his/her duties.²³ Both the transport manager and the operator have a duty to notify the traffic commissioner of a reduction in the hours worked as a transport manager and where the transport manager resigns, they should notify the traffic commissioner of that resignation through the Office of the Traffic Commissioner.²⁴
- 27.** As Paragraph 14A of Schedule 3 of the 1995 Act and Article 4 of Regulation (EC) No 1071/2009 make clear, a transport manager must possess more than good reputation, a qualification and sufficient hours to meet the statutory duty. S/he must be capable of actually managing the transport operation effectively. That may include an assessment not only of qualification but other facts such as knowledge

¹³ [2011/036 LWB Ltd, NT/2020/071 J Owens Transport Ltd – the relationship between an operator and a transport manager is dynamic and integral to the successful operation of a transport business](#)

¹⁴ The 1995 Act, as amended by The Goods Vehicles (Licensing of Operators) (Amendment) Regulations 2022, now requires transport managers for goods operator to be resident in the United Kingdom

¹⁵ [2006/405 Transclara Ltd, 2006/392 Gary Paul Brandon](#)

¹⁶ [2016/027 K McDonald trading as River Tay Executive Travel](#)

¹⁷ [2010/049 Aspey Trucks Ltd, 2009/307 Anne Jones Edwards and Edward Anthony Jones](#)

¹⁸ See Statutory Guidance and Statutory Directions on Good Reputation and Fitness

¹⁹ [2003/258 J D Cowan & A Fenny](#)

²⁰ [2003/343 Anglorom Trans \(UK\) Ltd & Others](#)

²¹ [2012/025 First Class Freight Ltd](#)

²² 1999/L56 Alison Jones trading as Jones Motors, Shamrock Coaches and Thomas Motor Services

²³ [2003/258 J D Cowan & A Fenny, 2006/056 Paul Oven Transport Services Ltd, 2016/059 Adrian John Dalton, 2016/068 Shaun Thomas Britton](#)

²⁴ [2014/085 Richard Heard](#)

or confidence to manage.²⁵ *“Given the importance attached to operators complying with the regulatory regime and given that transport managers must: “effectively and continuously manage the transport activities of an undertaking holding an operator’s licence”, it seems to us that whether or not an individual has the character, personality, ability and leadership qualities to ensure compliant operation as an operator or to effectively and continuously manage the transport activities as a transport manager is a factor which can, properly, be taken into account when assessing good repute.”*²⁶

- 28.** These requirements apply equally to all operators regardless of the size of the organisation and are an important part in maintaining the relationship of trust upon which the licensing system is based.²⁷ An operator must supervise and monitor the actions of a transport manager²⁸ by, for example, checking the maintenance inspections, the annual test pass rate, the number of prohibitions issued, the DVSA Operator Compliance Risk Score, the arrangements for securing compliance with the drivers’ hours’ rules and tachograph regulations etc.²⁹
- 29.** Where a traffic commissioner finds that a transport manager has failed to live up to the standards expected³⁰ the correct approach is to consider making a finding in respect of that transport manager’s repute. It is not open to a traffic commissioner to find a loss of professional competence unless there is a finding that the transport manager has never been professionally competent or that there has been a previous declaration that the transport manager was unfit by reason of a loss of good repute and has already had their CPC suspended.³¹ That is not to say that traffic commissioners do not have any authority to make findings concerning a transport manager’s professional competence. There will be instances when it will be open to traffic commissioners to make a finding that a purported transport manager does not in fact hold a valid certificate of professional competence. Examples might include where it was forged, the holder was not entitled to the certificate in some other way, or that it has been suspended as a result of a finding of loss of good repute elsewhere. The Upper Tribunal has indicated that, in such instances, it would be difficult to envisage circumstances in which such a finding would amount to a “disproportionate response”.³²
- 30.** In the past, where there was no power to revoke or withdraw a CPC on a finding against the transport manager³³, the Transport Tribunal commented that where a company’s licence was to be revoked, the traffic commissioner could also give a direction under section 28(5)(a) in respect of the transport manager if the transport manager was an officer (including a director) of the company. Whilst this position has changed under the provisions above, and reflecting Articles 13 and 14 of Regulation (EC) No 1071/2009, there is scope for the traffic

²⁵ [2014/058 Angus Smales trading as Angus Smales Eventing](#)

²⁶ [2014/050 Andrew Harris trading as Harris of Leicester](#)

²⁷ [2005/205 Eddie Stobart Ltd](#)

²⁸ 1999/L56 Alison Jones trading as Jones Motors

²⁹ See General Responsibilities below

³⁰ [2018/046 Mark Clinton](#) – upon a transport manager’s nomination they then become responsible for effectively and continuously managing the company’s regulatory compliance and should make sure all systems meet the legislative requirements

³¹ [2014/026 Simon Sivyver](#)

³² [2015/049 Matthew Reynolds](#)

³³ [2003/045 JJC Bulk Tippers Ltd](#), [2008/004 H & A Holdings Ltd](#), [2008/005 Mark Skellern Ltd & Mark Skellern](#), [2008/315 L C Mistry](#)

commissioner to allow a period of grace of *up to* 6 months where the transport manager no longer satisfies the requirement as to good repute any approach has to ensure fairness to *all* operators.³⁴

- 31.** The Upper Tribunal has confirmed that process: *“Before such an order can be made, a s.27(2) notice must be sent, stating the grounds upon which the TC is considering an order of revocation and inviting the operator to make representations in respect of those grounds which must be received by the OTC within 21 days of the notice. Moreover, the right of an operator to request a public inquiry when a TC is considering an order of revocation (as enshrined in s.29 of the 1995 Act) is highlighted by s.27(4). ...Furthermore, the operator was notified of the TC’s power to grant a PofG and invited to consider making such a request. It is for the operator to determine within the period allowed whether to request a public inquiry or make representations (including the nomination of a new transport manager) and/or request a PofG. A request for a PofG is an admission on the part of the operator that they no longer satisfy one or more of the statutory requirements.”*³⁵
- 32.** In order to grant a period of grace the traffic commissioner or staff acting under delegation must first establish that one or more of the requirements is no longer satisfied.³⁶ The traffic commissioner may then allow a period of grace to rectify the situation to be granted from the date of determination that the mandatory requirement is no longer met.³⁷ There is no additional procedural requirement. To quote the Upper Tribunal:
- “In our view, when considering whether or not to grant a period of grace, Traffic Commissioners will need some tangible evidence, beyond mere hope and aspiration, that granting a period of grace will be worthwhile, and that there are reasonable prospects for a good outcome. Some sort of analysis along these lines will be necessary because, amongst other reasons, Traffic Commissioners have to decide how long to grant. Moreover, as with a stay, there is no point in granting a period of grace if the likely effect is just to put off the evil day when regulatory action will have to be taken”.*³⁸
- 33.** The provisions also allow for the rehabilitation of a transport manager. A traffic commissioner is able to disqualify a transport manager for a period or require that transport manager to in effect obtain a new Certificate of Professional Competence before acting as a transport manager again. A failure to appoint a replacement transport manager after a period of grace or to communicate with the traffic commissioner can amount to serious misconduct on the part of the operator.³⁹ When a period of grace is granted to an operator, they are responsible for ensuring that they demonstrate the requirement is met prior to the expiry of any period of grace. An operator should therefore actively manage any dates and request an extension, when appropriate, whilst remembering that the grant and any extension is always at the discretion of the traffic commissioner.⁴⁰ If a period

³⁴ [2011/022 Andrew John Chatter trading as AJC Vehicle Delivery & Collection](#)

³⁵ 2021/018 Egertons Recovery Group Ltd

³⁶ [2020/072 Cambridge Removals & Storage Ltd](#) – whilst section 27(3) refers to a 21-day period in which the operator can make representations, it does not prevent a traffic commissioner from deciding whether to grant a Period of Grace

³⁷ [2015/040 Tacsí Gwynedd Ltd](#)

³⁸ [2014/008 Duncan McKee and Mary McKee](#)

³⁹ [2012/001 Zeeshan Malik trading as Langston’s Group](#), [2014/024 LA & Z Leonida trading as ETS](#), [2014/053 & 054 Carmel Coaches Ltd and Others](#)

⁴⁰ [2018/011 Sky rider Ltd](#)

of grace expires without the mandatory requirement being met then the traffic commissioner is obliged to revoke the operator licence.⁴¹ A proposed transport manager will not meet the requirement on an operator until that appointment is authorised upon the traffic commissioner being satisfied that the proposed transport manager meets all the requirements of paragraph 14A of Schedule 3 of the 1995 or Article 4 of Regulation (EC) No 1071/2009.⁴²

34. The Upper Tribunal has considered the applicability of a rehabilitation measure at the end of a disqualification period⁴³. Its provisional view is that if a traffic commissioner decides that a transport manager needs to re-take and obtain the necessary qualifications to secure a new Certificate of Professional Competence before acting as a transport manager again then the traffic commissioner has the power to impose an indefinite disqualification with a rehabilitation measure to that effect.⁴⁴
35. The Upper Tribunal has clarified the position as follows: *“the case of good repute it does not automatically follow that good repute is restored at the end of a disqualification. Instead it simply means that the person concerned has an opportunity to apply to act as a transport manager, (or in the case of disqualification from holding or obtaining an operator’s licence, to apply for a licence). It is open to a Traffic Commissioner to call in such an application to resolve any lingering doubts as to whether good repute, in either capacity, has, in fact, been restored. By contrast at the end of a period of disqualification the effect of paragraph 7B(3)(b) of Schedule 3 to the 1981 Act ceases and the person concerned can again use their certificate of professional competence as conclusive proof that they are professionally competent.”*⁴⁵

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

36. The key in determining whether or not a person is an employee (i.e. an internal transport manager), are the terms of employment; or is a service provider (i.e. an external transport manager), is the contract for supply of services. The Upper Tribunal has warned against tying in the provision of a transport manager with a consultancy service.⁴⁶
37. Terms or a contract of employment have not been comprehensively defined in legislation or case law. The courts have adopted various tests in order to determine whether or not a relationship amounts to a relationship of employment but the general approach is to consider all the factors relevant to the issue of employment and to weigh up those factors that point towards the existence of a contract of employment and those that point away from such a contract⁴⁷. It will be helpful to ask the following three questions:

⁴¹ [2021/052 Ian James Blackmur t/a IJB Transport](#)

⁴² [2014/040 & 041 C G Cargo Ltd & Sukhwinder Singh Sandhu](#)

⁴³ [2012/071 Silvertree Transport Ltd](#)

⁴⁴ This approach has been confirmed by the amendments to paragraph 17 of Schedule 3 of the 1995 Act by The Goods Vehicles (Licensing of Operators) (Amendment) Regulations 2022

⁴⁵ [2014/050 Andrew Harris trading as Harris of Leicester](#), This follows the Upper Tribunal’s decision in [2014/025 & 026 H. Sivyer \(Transport\) Ltd & Simon Sivyer](#) where it was held professional competence was not something which could be lost in the same way that good repute can be lost

⁴⁶ [2012/013 Russet Red Ltd](#)

⁴⁷ [Carmichael and Another v National Power Plc \[1999\] UKHL 47](#) approved 3 questions posed by the judge in [Ready Mixed Concrete \(South East\) Ltd v Minister of Pensions and National Insurance \[1968\] 2 QB 497](#)

- Has the transport manager undertaken to provide their work and skill in return for remuneration?
 - Is there such a degree of control to enable the transport manager to fairly be called a 'servant'?
 - Are there any other factors inconsistent with the existence of a contract of service?
- 38.** The presence or absence of any one factor is not conclusive, as the decision depends on the combined effect of all the relevant information. The factors given should not be treated as a checklist to identify those factors that appear to point one way and those which point the other, from which a result can be calculated. It is the overall effect of the relationship between the parties involved that will lead to a conclusion on whether or not a person is employed. It is wholly unacceptable for the transport manager to sign a blank form, with the details to be added in at a later date or to make a commitment to minimum contractual hours which one or both of the parties then or subsequently departs from.⁴⁸
- 39.** As with the test for who is an operator⁴⁹ the issue is usually one of control: for instance who is entitled to give the orders as to how the work should be done?⁵⁰ The greater the amount of control exercised over the details of the work to be done, the more likely the relationship is to be one of internal employment.⁵¹ In general, a self-employed person (i.e. an external transport manager) is told what to do, but not how to do it. An employee is normally part of the employer's organisation and does their work as an integral part of the business whereas an independent contractor is not usually integrated into the organisation but is accessory to it.⁵² The courts have also identified the following factors as useful in determining whether a person is an employee:
- the intention of the parties⁵³;
 - whether the person performing the services provide their own equipment⁵⁴;
 - whether they hire their own helpers⁵⁵;
 - what degree of financial risk they take;
 - payment of income tax and National Insurance contributions;
 - the degree of control⁵⁶;
 - what degree of responsibility for investment and management they have⁵⁷;
 - whether they have an opportunity of profiting from the management of the task.
- 40.** The Upper Tribunal has explored transport manager declarations in respect of the number of hours per week to be dedicated to fulfilling their statutory duty⁵⁸ and the remuneration for completing those duties⁵⁹. On signing the TM1

⁴⁸ [2006/252 Alec Hayden trading as Trans Consult](#)

⁴⁹ [2004/426 E A Scaffolding & Systems Ltd](#)

⁵⁰ [Mersey Docks and Harbour Board v Coggins and Griffith \(Liverpool\) Ltd and McFarlane \[1946\] UKHL 1](#)

⁵¹ [Simmons v Heath Laundry \[1910\] 1 KB 543](#)

⁵² [Ready Mixed Concrete \(South East\) Ltd v Minister of Pensions and National Insurance \[1968\] 2 QB 497](#)

⁵³ [Ferguson v John Dawson Ltd \[1976\] EWCA Civ 7](#)

⁵⁴ [Market Investigations Ltd v Minister of Social Security \[1969\] 2 QB 173](#), [Ferguson v John Dawson Ltd \[1976\] EWCA Civ 7](#)

⁵⁵ [Stevenson Jordan and Harrison v MacDonald and Evans \[1952\] 1 TLR 101](#)

⁵⁶ [Paul William Lane v Shire Roofing Company \(Oxford\) Ltd \[1995\] EWCA Civ 37](#)

⁵⁷ [Binding v Great Yarmouth Port and Haven Commissioners \[1923\] 2 WLUK 69](#), [Humberstone v Northern Timber Mill \(1949\) 79 CLR 389](#)

⁵⁸ [2016/059 Adrian John Dalton](#)

⁵⁹ [2016/068 Shaun Thomas Britton](#)

declaration, a transport manager commits to fulfilling the statutory responsibilities. If a transport manager is unable to discharge that duty on the declared hours, they should consider increasing their input or resigning their role. The Tribunal went on to highlight, in the case of Adrian John Dalton⁶⁰, that a transport manager can delegate tasks but that this does not shift their responsibility and they must ensure that the delegated tasks are carried out properly.

⁶⁰ [2016/059 Adrian John Dalton](#)

DIRECTIONS

41. The Senior Traffic Commissioner for Great Britain issues the following Directions to traffic commissioners under section 4C(1) of the Public Passenger Vehicles Act 1981 (as amended) and by reference to section 1(2) of the Goods Vehicles (Licensing of Operators) Act 1995. These Directions are addressed to the traffic commissioners in respect of the approach to be taken by staff acting on behalf of individual traffic commissioners and dictate the operation of delegated functions in relation to the requirements for and on transport managers.

Basis of Directions

42. In the interests of adopting a consistent approach to decision making, the directions set out below are designed to assist support staff who must decide whether to refer a proposed transport manager's case to the traffic commissioner for consideration and also the circumstances in which a traffic commissioner may wish to consider the suitability of a proposed transport manager at a public inquiry.
43. These directions are designed to assist staff when they are required to decide whether or not to refer a case to a traffic commissioner following the receipt of an application through the Vehicle Operator Licensing system, indicating that a transport manager's suitability is in question and/or continuous and effective responsibility is in doubt. The Upper Tribunal historically indicated that, whilst completion of the TM1 form is not mandatory if it is not completed then there will be a heavier burden on the applicant and in reality, a completed paper or electronic form is likely to prove more satisfactory.⁶¹ In practice members of staff working on behalf of the traffic commissioner now expect applicants to complete and submit the required information through the Vehicle Operator Licensing system.
44. External transport managers (including those with a mix of internal and external appointments) are limited to a maximum of 50 vehicles for up to a total of 4 operators. Whilst there are no statutory limitations on the number of standard licences for which a suitably qualified "internal" transport manager can be nominated, it is important to outline what the Senior Traffic Commissioner considers to be determining factors when assessing the suitability of a proposed transport manager within the legislative framework.
45. The holder of a standard international licence must engage a holder of an international Certificate of Professional Competence to act as transport manager.

Determining Factors

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

⁶¹ [2011/036 LWB Ltd](#)

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

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

Repute

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

- commercial law;
- insolvency law;
- pay and employment conditions in the profession;
- road traffic law;
- professional liability;
- trafficking in human beings or drugs.

51. In addition, to satisfy the repute requirement, the operator and/or the transport manager cannot have been convicted of a serious criminal offence or incurred a penalty for a serious infringement of Community rules relating in particular to:

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

52. Under paragraph 17 of Schedule 3, where a transport manager is disqualified the traffic commissioner who made the order may cancel the order no earlier than one year, beginning with the day on which the order was made. A traffic commissioner may consider the following as a basis for cancelling an order under paragraph 17(1A)(b):

- passed the written examination referred to in paragraph 13(1)(a);
- for no less than three months acted under the direction of a professionally competent transport manager who satisfies the requirements of good repute.

A traffic commissioner might also consider the applicability of a rehabilitation measure at the end of a disqualification period, for instance, a 2-day CPC refresher course. However, where the Transport Manager has deliberately acted in a way which results in a risk to life and/or the operation of unsafe vehicles or drivers to falsify records, it may be difficult to set a specific rehabilitative measure beyond a long or indefinite period of disqualification.

Mutual Recognition of Certificates and Other Documents

53. Article 19 of Regulation (EC) No 1071/2009 allows, without prejudice to Article 11(4), for a traffic commissioner to accept as sufficient proof of good repute for admission to the occupation, an extract from a judicial record, or failing that, an equivalent document issued by a competent judicial or administrative authority in the EU Member State where the transport manager or any other relevant person

used to reside. Article 19(4) restricts the production of such a document or certificate, to no more than 3 months after the date of issue.

54. Article 11(4) requires (post January 2013) that the competent authority verify, by accessing data in Article 16(2)(f), whether the designated transport manager(s) has been declared unfit. Article 16(2) sets out the minimum data to be recorded, with 16(2)(f) referring specifically to those persons who have been declared unfit to manage the transport activities of an undertaking.

Genuine Link (Internal and External Transport Managers)

55. A transport manager must also have a genuine link to the undertaking. The application and other forms require a declaration to be made that an internal transport manager has that genuine link. For an internal transport manager that might be demonstrated if the transport manager is:
- the licence holder; or
 - one of the partners whose name is on the licence; or
 - is a director of the company in whose name the licence is held; or
 - a full or part-time employee.
56. Employment might be demonstrated in a number of ways, starting with tax, employee contributions and remuneration⁶². The traffic commissioner is entitled to check this during the application process or during the life of the licence and as against previous declarations by requesting proof of employment, such as a contract (see below and Annex 2 for general responsibilities).
57. An external transport manager may be hired in to fulfil the role of transport manager under a contract which specifies the tasks he or she will perform as the transport manager. A transport manager cannot however be employed through or part of a package supplied by a transport consultancy and any attempt to must be referred to the traffic commissioner. An external transport manager can only work for a maximum of 4 operators (not licences) with a combined total fleet of 50 authorised vehicles. The traffic commissioner may determine for reasons such as other determining factors set out in the attached Statutory Guidance and these Statutory Directions that for an individual that number should be less. It is possible to be an internal transport manager for one operator and an external transport manager for another. However, in that case, the starting point will be to limit the number of operators and vehicles applicable to those set for external transport managers for all the licences.
58. As the above suggests, ultimately the determination of the internal and/or external status of a transport manager, is a matter for the traffic commissioner. A starting point may be to check whether the nominated CPC holder has even met with the applicant. It may be necessary to examine the terms of the contract of employment particularly where there is a group of companies involved. One of the purposes of the legislation is to avoid a situation where the transport manager acts in name only and does not have continuous and effective management of the transport operation. Where there is a history of short-term appointments, which might indicate a CPC holder acting as akin to a transport manager for convenience, further enquiries may be required so as to satisfy the traffic

⁶² The National Living Wage should be considered - <https://www.gov.uk/national-minimum-wage-rates>

commissioner that the nominated CPC holder will actually exercise the responsibilities of transport manager.

General Responsibilities

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

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

Drivers – administration

- to ensure that drivers hold the appropriate licence for the vehicle they are driving (including non-GB vocational drivers from EU member states who are required to register their driving licences with DVLA within 12 months of being resident);
- to ensure that regular checks are carried out on the drivers' licences (usually every 3 months);
- to ensure that vocational drivers hold a valid driver CPC qualification (DQC);
- to ensure that all drivers hours records are kept for a period of no less than 12 months and are made available upon request;
- to ensure that all working time records are kept for a period of no less than 24 months and are made available upon request;
- to ensure that relevant declarations are posted for drivers in EU Member States;⁶³

Drivers – management

- to ensure compliance with the driving hours rules (EU or Domestic Hours rules);
- to ensure that drivers are recording their duty, driving time and rest breaks on the appropriate equipment or in drivers hours books and their records are being handed back for inspection as required;
- where appropriate, to download and store data from the vehicle digital tachograph unit (at least every 90 days) and from the drivers' tachograph smart cards (at least every 28 days);
- to ensure that drivers' hours records are retained and are available to be produced during the relevant period;

⁶³ <https://www.postingdeclaration.eu/landing>

- to ensure that records are retained for the purposes of the Working Time Directive (WTD) and that they are available to be produced during the relevant period;
- to ensure that drivers are adequately trained and competent to operate all relevant vehicles and equipment;
- to contribute to relevant training and subsequent disciplinary processes as required;

Drivers – operations

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

Vehicle – administration

- to ensure that vehicle maintenance records are retained for a period of no less than 15 months and are made available upon request;
- to ensure that vehicles are specified as required and that operator licence discs are current and displayed correctly;⁶⁴
- to ensure sufficient contingency within the level of authority;
- to ensure that vehicle payloads notifications are correct, height indicators are fitted and correct, and tachograph calibrations are up to date and displayed;
- to ensure that there are up to date certificates of insurance indemnifying company cars, commercial vehicles and plant;
- to ensure a suitable maintenance planner is completed and displayed appropriately, setting preventative maintenance inspection dates at least 6 months in advance and to include the Annual Test and other testing or calibration dates;

Vehicle – management

- to ensure that vehicles and trailers are kept in a fit and roadworthy condition;
- to ensure that reported defects are either recorded in writing or in a format which is readily accessible and repaired promptly;
- to ensure that vehicles and trailers that are not roadworthy are taken out of service;
- to ensure that vehicles and towed equipment are made available for safety inspections, service, repair and statutory testing;
- to ensure that safety inspections and other statutory testing are carried out within the notified O-licence maintenance intervals (ISO weeks);
- to liaise with maintenance contractors, manufacturers, hire companies and dealers, as might be appropriate and to make certain vehicles and trailers are serviced in accordance with manufacturer recommendations;
- to ensure the security of vehicles so that they can only be operated under the authority of the operator.⁶⁵

- 60.** To assist members of staff in assessing applications to appoint a particular CPC holder the Senior Traffic Commissioner has identified in Annex 1 those factors which might be relevant to the capacity of the individual to meet the statutory duty either alone or with the assistance of others. In assessing capacity, namely

⁶⁴ A failure to notify vehicle changes promptly can potentially impact on a transport manager's repute where for example hired vehicles are left specified on the licence after being returned or there is some other loss

⁶⁵ <https://www.gov.uk/government/publications/security-guidance-for-goods-vehicle-operators-and-drivers>

whether there is sufficient time to conduct transport manager functions properly, the Senior Traffic Commissioner has identified some general indicators as to effective transport management:

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

61. The Upper Tribunal has previously recognised various qualities, such as ability to effectively and continuously manage the transport activities as a transport manager, as relevant factors that can be taken into account when assessing good repute. Whilst Great Britain has not implemented specific training requirements pursuant to Articles 8(5) and 8(6), one of the purposes of Regulation (EC) No 1071/2009 is that “*applicants for the post of transport manager should possess high-quality professional knowledge.*”⁶⁶ Continuing Professional Development (CPD) is the term used to describe the learning activities professionals engage in to develop and enhance their abilities. This practice promotes learning to be conscious and proactive, rather than passive and reactive. CPD can take many forms such as training workshops, conferences and events, e-learning programs, best practice techniques and ideas sharing. If there has been sometime since CPD was undertaken the starting point for evidence would be for the completion of a 2-day transport manager CPC refresher course, run by either:

- a trade association (Logistics UK/ RHA/ BAR/ CPT);
- a professional body (IoTA/ CILT/ SOE/ IRTE);
- an approved exam centre offering the relevant transport manager CPC qualification for the type of licence held; or
- a firm of solicitors (or their associated training organisation) with significant experience with road transport regulatory and compliance issues (defined as having represented road transport operators and/or transport managers in at least 20 public inquiries over the past two years).

By way of comparison, drivers are required to complete 35 hours of periodic training every 5 years to keep their Driver Certificate of Professional Competence.

62. The Senior Traffic Commissioner has identified the following instances when a transport manager should expect to provide evidence of their capacity to meet the statutory duty through continuing professional development:

- on initial application when a transport manager has not been specified as such within the previous five years;
- on initial application when a transport manager’s qualification is more than 10 years old;

⁶⁶ Recital 11 of Regulation (EC) No 1071/2009

- on application when a transport manager is proposing to be on more than one licence or when the proposed hours are less than the starting point;
- on renewal of an operator's licence;
- at Public Inquiry when considering whether a transport manager has exercised continuous and effective management.

Professional Competence

- 63.** Paragraph 13(2a) of Schedule 3 of the 1995 Act and Article 8(8) of Regulation (EC) No 1071/2009 require that at application stage professional competence will be demonstrated by production of a certificate which meets the security features and the model certificate annexed to the EU Regulations and bears the seal of the duly authorised authority or body which issued it.⁶⁷ Under Article 8(2) the examination must be sat in the Member State in which the holder has their normal residence or, the Member State in which they work. A traffic commissioner is unlikely to be able to accept a qualification in another Member State where they do not normally reside or work.
- 64.** In the case of digital applications electronic copies of original certificates must be uploaded with the application, however traffic commissioners and staff acting on their behalf reserve the right to request the original copy. In the case of a nominated transport manager who is already accepted to act in that capacity on another licence the repeat production of their certificate will not normally be required, provided that one of the traffic commissioners already holds a record of the original certificate. Again, traffic commissioners and staff acting on their behalf reserve the right to request the original certificate, wherever there is any doubt as to the qualification.
- 65.** Those with existing third-party qualifications will continue to be exempt from the CPC examination requirement and the Department for Transport (DfT) aims to integrate them in future to the CPC regime. Bodies who had issued exemptions re-issued certificates in the new CPC format and no new exemptions will be issued. There will be no new national CPCs, but existing certificates will remain valid for 'national' operations.
- 66.** Members of staff working on behalf of the traffic commissioner must also ensure applicants complete and submit the required information through the Vehicle Operator Licensing system, including receipt of an electronic signature or return of a signed TM1 form. Traffic commissioners and staff acting on their behalf reserve the right to request the original document. In line with Article 8(1) the holder of that certificate shall be deemed to possess knowledge corresponding to the level set out in Part I of the Annex to the Regulations (see Annex 2 to these Directions), unless found otherwise by a traffic commissioner or a competent authority in an EU Member State.
- 67.** The statutory duty refers to effective management and the traffic commissioner might legitimately be concerned as to the currency of the nominated CPC holder's professional knowledge. The Senior Traffic Commissioner does not consider it unreasonable for CPC holders to be aware of the conditions and undertakings attached to the operator's licence upon which they are named nor, given the

⁶⁷ An individual exempted by the Secretary of State, under paragraph 12 of Schedule 6, from the requirements of professional competence applies only to light goods vehicle licences – see paragraph 11 of Schedule 6

potential impact on an operator's reputation, to be aware of the most serious infringement provisions.⁶⁸ In those circumstances it may be appropriate to consider an undertaking that refresher training provided by a trade association, professional body or an examination centre (approved by an awarding body) which offers the management CPC qualification be completed within a specified time with evidence of attendance to be produced.

Acquired Rights (Formerly Known as 'Grandfather Rights')

- 68.** In line with Article 9 of Regulation (EC) No 1071/2009 previous 'Grandfather Rights' (GFR) were replaced by new 'Acquired Rights' certificates. The Secretary of State had responsibility for issuing certificates. They were issued on the basis of a declaration that the individuals in question could provide proof, upon request, that they had 'continuously managed' a road haulage or a road passenger transport operation in one or more EU Member State for the period of 10 years ending on 4 December 2009. Acquired Rights certificates were automatically issued to all transport managers exercising 'grandfather rights' on an operator's licence at the date of implementation. Those holding 'Grandfather Rights' but not listed as a transport manager on an operator's licence at that date were also able to apply for an "Acquired Rights" certificate.
- 69.** The Secretary of State's decision was based on details contained in an application form. The details required included: the serial number of the GFR certificate, date and place of birth, details of the work undertaken as a transport manager from 4 December 1999 to 4 December 2009 including names and addresses (and O-licence numbers where possible) for all operators worked for. That information is therefore available from Department for Transport records.
- 70.** A similar process, to that described above, has been adopted for the extension of operator licensing which covers light goods vehicles which weigh more than 2.5 tonnes and up to 3.5 tonnes in maximum laden weight⁶⁹ (either alone, or combined weight when used with a trailer) and which operate internationally, for hire or reward.
- 71.** Paragraphs 11 to 18 of Schedule 6 of the 1995 Act⁷⁰ provide for exemptions to individuals, until the end of 20th May 2025, from the requirement under section 13A(3)(a)(i) or paragraph 14A(1)(c) of Schedule 3 to be professionally competent if the Secretary of State is satisfied that the individual had, for ten years or more ending with 20th August 2020, continuously managed national or international transport operations as, for or on behalf of an undertaking that used only light goods vehicles.
- 72.** An individual may, on or before 20th May 2024, apply to the Secretary of State for an exemption. Paragraph 19 states that these provisions will cease to have effect at the end of 20th May 2025. After this date operators will need to have a transport manager who holds a Certificate of Professional Competence approved on their licence or risk action being taken under section 27.

⁶⁸ See Statutory Guidance and Statutory Directions on Good Reputation and Fitness

⁶⁹ Or permissible laden mass, which is the equivalent term in EU Legislation

⁷⁰ As inserted by The Goods Vehicles (Licensing of Operators) (Amendment) Regulations 2022

73. A false declaration in order to obtain an Acquired Rights certificate will be treated as having a serious impact on the repute of that transport manager and must be referred to a traffic commissioner.

Appeals against Decisions Not to Issue an Acquired Rights Certificate for Light Goods Vehicles

74. If the Secretary of State decides not to grant an exemption, the applicant may appeal the decision to a traffic commissioner within 28 days beginning with the day after the date the decision is made. The traffic commissioner then has 56 days, beginning with the day after the date the appeal is made, in which to either confirm or reverse the decision. Consideration of an appeal may be by hearing, if requested, or on the papers. It will be for the individual traffic commissioner to decide on the structure of any hearing and the information required. There will be no requirement for the Secretary of State or his nominee to be a party to that appeal but the Secretary of State may apply to make representations and/or appear.⁷¹ The law does not prevent new evidence being placed before the traffic commissioner but the commissioner considering the appeal may issue a time limit regarding the production of new evidence and may prevent any further evidence being admitted after that date.

Checking Transport Manager Records

75. In October 2011 transport managers were requested to complete and return a questionnaire in order to populate the national register. Some operators used this opportunity to change the transport manager details without making an application as they were required to do. The questionnaire specifically required that the transport manager only list those licences for which they had been *authorised*. Staff should be alive to this risk when making checks against the records. If there has been a false declaration this will need to be referred to the traffic commissioner to consider whether or not to take regulatory action in respect of the named CPC holder and/or the operator.
76. A similar approach should be taken where the self-service facility has been used and there is no subsequent application lodged. The Upper Tribunal has also been critical of incidents where the name of the previous transport manager has been left on the record awaiting an application.⁷²

Periods of Grace

77. Section 27(3A) of the 1995 Act and Regulation (EC) No 1071/2009 (Annex 2) allows traffic commissioners a discretion in circumstances where it is found that there is no authorised transport manager in place. The traffic commissioner can allow a period of time of up to 6 months, which might be extended by 3 months in the event of the death or physical incapacity of the transport manager, to find a replacement transport manager. A transport manager is responsible for continuous and effective management of a standard transport operation and an important means by which a transport business maintains compliance. It is a condition of an operator's licence that changes in professional competence, including the availability of a transport manager, are notified to the traffic commissioner.

⁷¹ See Statutory Guidance and Statutory Directions on Case Management

⁷² [2011/036 LWB Ltd](#)

- 78.** Where staff have grounds to suspect that there is no transport manager in place, then the operator should be notified and given a limited time (for instance 14 days) to make written representations, before the traffic commissioner decides whether to allow time for rectification and for what period. In order to allow a period of grace the traffic commissioner must establish that the requirement for a transport manager is no longer met. An application in effect invites a traffic commissioner to make an adverse finding that the mandatory and continuing requirement for professional competence is no longer met.
- 79.** In practice this will usually be confirmed by the operator seeking to benefit from a period of grace. Operators should understand that if, upon expiry of a period of grace, professional competence has still not been demonstrated (as set out in these Statutory Directions) then the operator's licence will have to be revoked.
- 80.** The Upper Tribunal has indicated that there should be tangible evidence that a period of grace will be worthwhile, in other words there are reasonable prospects that the mandatory requirement will be met before expiry of the specified period.⁷³ The traffic commissioner can then be invited to decide how long to allow within the maximum periods permitted by the legislation. For instance, where a candidate has already failed the exams it may be more difficult to persuade a traffic commissioner that resitting the exams provides that reasonable prospect for the future.
- 81.** If the qualifying circumstances are met then a traffic commissioner has a discretion as to how long a period of grace they might grant. The Senior Traffic Commissioner has set a starting point of 3 months, which is intended to allow an extension to the maximum period should circumstances require it, taking account of the situation of the operator and fairness to other operators who are already complying. Only a traffic commissioner has authority to extend directions made by a traffic commissioner.

⁷³ [2014/008 Duncan McKee](#)

ANNEX 1 - STARTING POINT FOR ASSESSING THE CAPACITY TO EXERCISE CONTINUOUS AND EFFECTIVE MANAGEMENT

Starting Point

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

Delegated Authority Applications

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

Level of Authority

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

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

Additional hours may be required for trailers.

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

Determining Factors

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

Factors which might assist the traffic commissioner in deciding on an application include:	
The terms upon which the proposed transport manager is to be employed. Is the contract directly with the transport manager or with a transport consultancy?	The traffic commissioner may wish to see a copy of the contract of employment.
The number of operator licences and/or vehicles for which that transport manager will be responsible.	If a transport manager is already listed on at least 3 other licences; and/or if a transport manager is already responsible for 50 vehicles. ⁷⁴
The number of operating centres for which the transport manager is responsible both on that licence and any other operator's licences.	The geographical location of the transport manager in relation to the operator's business and all operating centres on all licences. The number of times and length of period that the transport manager intends to visit each operating centre.
Does the transport manager have any other duties in the organisation e.g. as a driver, director or contracts manager?	Traffic commissioners will wish to consider carefully any impact this may have on continuous and effective responsibility for the transport operations.
Does the proposed transport manager have other employment with another employer (including as a driver) or are they also self employed in any capacity?	Traffic commissioners will wish to consider carefully any impact this may have on continuous and effective responsibility for the transport operations.
Are effective systems in place so that the transport manager "either alone or jointly with one or more other persons, has continuous and effective responsibility for the management of the transport operations of the business"?	Who else is assisting the transport manager, what qualifications do they hold, how will they be supervised and how the transport manager will meet the obligation to exercise continuous and effective responsibility. What technology and management systems will be utilised?
	How does the compliance management of the organisation support the transport manager(s) in meeting the statutory duty?
Previous compliance history of licences with which the nominated transport manager has been involved ⁷⁵ .	Details may be required together with details of any subsequent action taken by the transport manager.
Previous compliance history of the applicant/ operator.	

⁷⁴ These are starting points. Paragraph 14A of Schedule 3 of the 1995 Act and Regulation (EC) No 1071/2009 limit external transport managers to act for no more than 4 licence holders and a maximum of 50 vehicles (or fewer if EU Member States so choose), with a discretion allowed to the competent authority.

⁷⁵ This should not require a submission to contain every compliance episode but checks should be completed to ensure that there has been no significant change.

<p>Is the transport manager up to date with the current requirements of the operator licence? What continuing professional development has the transport manager undertaken?</p>	<p>How recently has the transport manager received training on his or her CPC duties? Details of the course, provider and certificate of attendance may be required.</p>
<p>The ability of the transport manager to ensure that the required records are completed and maintained.</p>	<p>Details of any issues regarding literacy and/or numeracy. Access to the required records as, when and where needed.</p>
<p>Does the transport manager have ready access to the relevant records including records of remedial action?</p>	<p>See Statutory Guidance and Statutory Directions on Operating Centres, Stable Establishments and Addresses for Service</p>
<p>The authority of the transport manager e.g. purchase of parts for vehicles or maintenance equipment, ability to 'hire and fire', proper access to online operator licence records</p>	
<p>A Certificate of Professional Competence (CPC) from any European Union member state (after accession) should be taken as evidence of a transport manager's capability to perform that role, subject to matters that might affect the transport managers' good repute. These should be in the format required by Annex III of Regulation (EC) No 1071/2009. The distinguishing signs of the relevant member state should be on the certificate as listed opposite.</p>	<p>(B) Belgium, (BG) Bulgaria, (HR) Croatia, (CZ) Czech Republic, (DK) Denmark, (D) Germany, (EST) Estonia, (GR) Greece, (E) Spain, (F) France, (IRL) Ireland, (I) Italy, (CY) Cyprus, (LV) Latvia, (LT) Lithuania, (L) Luxembourg, (H) Hungary, (M) Malta, (NL) Netherlands, (A) Austria, (PL) Poland, (P) Portugal, (RO) Romania, (SLO) Slovenia, (SK) Slovakia, (FIN) Finland, (S) Sweden, (UK) United Kingdom.</p>
<p>Does the transport manager have a history of appearing on operator licences for a short period possibly for the purpose of an application?</p>	<p>The genuine link between the operator/applicant and transport manager should be investigated further before being referred to the traffic commissioner.</p>

ANNEX 2 - RETAINED EU LEGISLATION

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

Regulation (EC) No 1071/2009 establishing common rules concerning conditions to be complied with to pursue the occupation of road transport operator repealed Council Directive 96/26 EC and applicable from 4th December 2011

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

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

(d) have the requisite professional competence; and

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

Article 4 -Transport manager

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

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

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

(c) is resident in the Community.

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

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

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

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

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

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

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

Article 6 - Conditions relating to the requirement of good repute

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

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

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

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

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

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

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

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

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

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

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

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

(b) the Commission shall draw up a list of categories, types and degrees of seriousness of serious infringements of Community rules which, in addition to those set out in Annex IV, may lead to the loss of good repute. Member States shall take into account information on those infringements, including information received from other Member States, when setting the priorities for checks pursuant to Article 12(1).

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

To this end, the Commission shall:

- (i) lay down the categories and types of infringement which are most frequently encountered;
- (ii) define the degree of seriousness of infringements according to their potential to create a risk of fatalities or serious injuries; and
- (iii) provide the frequency of occurrence beyond which repeated infringements shall be regarded as more serious, by taking into account the number of drivers used for the transport activities managed by the transport manager.

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

Article 8 - Conditions relating to the requirement of professional competence

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

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

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

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

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

4. Member States may duly authorise, in accordance with criteria defined by them, bodies to provide applicants with high-quality training to prepare them for the

examinations and transport managers with continuous training to update their knowledge if they wish to do so. Such Member States shall regularly verify that these bodies at all times fulfil the criteria on the basis of which they were authorised.

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

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

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

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

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

8A. A certificate issued to a person under paragraph 8 is not valid for the duration of any order disqualifying the person from acting as a transport manager under:

(a) paragraph 16(2) of Schedule 3 to the 1995 Act; or

(b) regulation 15(2) of the Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012(6).

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

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

Article 9 - Exemption from examination

Member States may decide to exempt from the examinations referred to in Article 8(1) persons who provide proof that they have continuously managed a road haulage

undertaking or a road passenger transport undertaking in one or more Member States for the period of 10 years before 4 December 2009.

Article 11 - Examination and registration of applications

1. A transport undertaking which complies with the requirements laid down in Article 3 shall, upon application, be authorised to engage in the occupation of road transport operator. The competent authority shall ascertain that an undertaking which submits an application satisfies the requirements laid down in that Article.

2. The competent authority shall record in the national electronic register referred to in Article 16 the data relating to undertakings which it authorises and which are referred to in points (a) to (d) of the first subparagraph of Article 16(2).

3. The time limit for the examination of an application for authorisation by a competent authority shall be as short as possible and shall not exceed 3 months from the date on which the competent authority receives all documents necessary to assess the application. The competent authority may extend this time limit for one additional month in duly justified cases.

4. Until 31 December 2012, the competent authority shall verify, in case of any doubt when assessing the good repute of an undertaking, whether at the time of application the designated transport manager or managers are declared, in one of the Member States, unfit to manage the transport activities of an undertaking pursuant to Article 14.

From 1 January 2013, when assessing the good repute of an undertaking, the competent authority shall verify, by accessing the data referred to in point (f) of the first subparagraph of Article 16(2), either by direct secure access to the relevant part of the national registers or by request, whether at the time of the application the designated transport manager or managers are declared, in one of the Member States, unfit to manage the transport activities of an undertaking pursuant to Article 14.

Measures designed to amend non-essential elements of this Regulation and relating to a postponement for a maximum of 3 years of the dates referred to in this paragraph shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

5. Undertakings with an authorisation to engage in the occupation of road transport operator shall, within a period of 28 days or less, as determined by the Member State of establishment, notify the competent authority which granted the authorisation of any changes to the data referred to in paragraph 2.

6. The obligation imposed by paragraph 5 on such an undertaking constitutes a condition attached to a qualifying licence for the purposes of:

(a) if the undertaking is established in Great Britain, section 26(1)(b) of the 1995 Act;
or

(b) if the undertaking is established in Northern Ireland, section 23(1)(b) of the 2010 Act.

Article 13 - Procedure for the suspension and withdrawal of authorisations

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

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

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

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

Article 14 - Declaration of unfitness of the transport manager

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

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

Article 19 - Certificates of good repute and equivalent documents

1. Without prejudice to Article 11(4), the Member State of establishment shall accept as sufficient proof of good repute for admission to the occupation of road transport operator the production of an extract from a judicial record or, failing that, an equivalent document issued by a competent judicial or administrative authority in the Member State where the transport manager or any other relevant person used to reside.

2. Where a Member State imposes on its own nationals certain conditions relating to good repute, and proof that these conditions are met cannot be provided by means of the document referred to in paragraph 1, that Member State shall accept as sufficient proof for nationals of other Member States a certificate issued by a competent judicial or administrative authority in the Member State(s) where the transport manager or any other relevant person used to reside stating that these conditions have been met. Such certificate shall relate to the specific information taken into consideration in the Member State of establishment.

3. If the document referred to in paragraph 1 or the certificate referred to in paragraph 2 has not been issued by the Member State(s) where the transport manager or any other relevant person used to reside, that document or certificate may be replaced by

a declaration on oath or by a solemn declaration made by the transport manager or any other relevant person before a competent judicial or administrative authority or, where appropriate, before a notary in the Member State where the transport manager or any other relevant person used to reside. Such authority or notary shall issue a certificate authenticating the declaration on oath or the solemn declaration.

4. A document referred to in paragraph 1 and a certificate referred to in paragraph 2 shall not be accepted if produced more than 3 months after their date of issue. This condition shall also apply to a declaration made in accordance with paragraph 3.

Article 21 - Certificates of professional competence

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

2. A certificate issued before 4 December 2011 as proof of professional competence pursuant to the provisions in force until that date shall be deemed to be equivalent to a certificate which complies with the model certificate set out in Annex III and shall be recognised as proof of professional competence in all Member States. Member States may require that holders of certificates of professional competence valid only for national transport pass the examinations, or parts of the examinations, referred to in Article 8(1).

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

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

The minimum level of knowledge, as indicated below, may not be below level 3 of the training-level structure laid down in the Annex to Council Decision 85/368/EEC⁷⁶

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

A. Civil law

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

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

in relation to road haulage:

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

in relation to road passenger transport:

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

⁷⁶ Council Decision 85/368/EEC of 16 July 1985 on the comparability of vocational training qualifications between the Member States of the European Community (OJ L 199, 31.7.1985, p. 56)

B. Commercial law

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

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

C. Social law

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

1. the role and function of the various social institutions which are concerned with road transport (trade unions, works councils, shop stewards, labour inspectors, etc.);
2. the employers' social security obligations;
3. the rules governing work contracts for the various categories of worker employed by road transport undertakings (form of the contracts, obligations of the parties, working conditions and working hours, paid leave, remuneration, breach of contract, etc.);
4. the rules applicable to driving time, rest periods and working time, and in particular the provisions of Regulation (EEC) No 3821/85, Regulation (EC) No 561/2006, Directive 2002/15/EC of the European Parliament and of the Council⁽¹⁾ and Directive 2006/22/EC, and the practical measures for applying those provisions; and
5. the rules applicable to the initial qualification and continuous training of drivers, and in particular those deriving from Directive 2003/59/EC of the European Parliament and of the Council⁷⁷

D. Fiscal law

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

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

⁷⁷ Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers (OJ L 226, 10.9.2003, p. 4)

E. Business and financial management of the undertaking

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

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

F. Access to the market

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

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

in relation to road haulage:

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

in relation to road passenger transport:

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

G. Technical standards and technical aspects of operation

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

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

in relation to road haulage:

6. be familiar with the different types of cargo-handling and loading devices (tailboards, containers, pallets, etc.) and be able to introduce procedures and issue instructions for loading and unloading goods (load distribution, stacking, stowing, blocking and chocking, etc.);
7. be familiar with the various techniques of 'piggy-back' and roll-on roll-off combined transport;
8. be able to implement procedures to comply with the rules on the carriage of dangerous goods and waste, notably those arising from Directive 2008/68/EC⁷⁸(1) and Regulation (EC) No 1013/2006⁷⁹
9. be able to implement procedures to comply with the rules on the carriage of perishable foodstuffs, notably those arising from the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be used for such Carriage (ATP);
10. be able to implement procedures to comply with the rules on the transport of live animals.

⁷⁸ Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods(OJ L 260, 30.9.2008, p. 13). (1) and Regulation (EC) No 1013/2006(2)

⁷⁹ Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190,12.7.2006, p. 1). (2)

H. Road safety

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

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

in relation to road passenger transport:

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