

SCHEDULE 2

Regulation 8(1)

Amendments to the Goods Vehicles (Licensing of Operators) Act 1995

1. The 1995 Act is amended as follows.
- 2.—(1) Section 2 (obligation to hold operator’s licence) is amended as follows.
 - (2) After subsection (1) insert—
 - “(1A) Subsection (1) applies in spite of Article 1.4(c) of the 2009 Regulation (exemption for slow vehicles unless otherwise provided in national law).
 - (1B) Subsection (1)(a) does not apply to the use of a small goods vehicle falling within paragraph 1A of Schedule 1.
 - (1C) Subsection (1)(b) does not apply to the use of a small goods vehicle falling within any of paragraphs 2, 3 or 4 of Schedule 1.”
 - (3) In subsection (2), omit paragraph (a).
 - (4) For subsection (3) substitute—
 - “(3) In subsection (2)(b) and (c), “established”, “haulier” and “international carriage” have the same meaning as in Regulation (EC) No 1072/2009 on common rules for access to the international road haulage market”.
3. In section 4 (temporary exemptions), omit subsection (4).
- 4.—(1) Section 12 (objections to, and representations against, issue of operators’ licences) is amended as follows.
 - (2) In subsection (1)(a), for “section 13” substitute “sections 13A to 13D”.
 - (3) In subsection (11)—
 - (a) in the opening words, for “section 13” substitute “sections 13A to 13D”;
 - (b) in paragraph (a) for “subsections (3), (5) and (6) of that section” substitute “sections 13A, 13C and 13D”;
 - (c) in paragraph (b), for “subsections (4), (5) and (6) of that section” substitute “sections 13B, 13C and 13D”.
5. For section 13 substitute—

“Determination of applications for operators’ licences

- 13.—(1) On an application for a standard licence a traffic commissioner must consider—
 - (a) whether the requirements of sections 13A and 13C are satisfied, and
 - (b) if the commissioner thinks fit, whether the requirement of section 13D is satisfied.
- (2) On an application for a restricted licence a traffic commissioner must consider—
 - (a) whether the requirements of sections 13B and 13C are satisfied, and
 - (b) if the commissioner thinks fit, whether the requirement of section 13D is satisfied.
- (3) Subsections (1) and (2) are subject to sections 11 (publication of application) and 45(2) (payment of application fee).
- (4) In considering whether any of the requirements of sections 13A to 13D are satisfied, the traffic commissioner must have regard to any objection duly made under section 12(1) (a) in respect of the application.

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(5) If the traffic commissioner determines that any of the requirements that the commissioner has taken into consideration in accordance with subsection (1) or (2) are not satisfied, the commissioner must refuse the application.

(6) In any other case the commissioner must grant the application, unless either of the following provisions applies—

- (a) section 14(2) (power to refuse application on environmental grounds);
- (b) section 45(2) (power to refuse to proceed until fee is paid).

Requirements for standard licences

13A.—(1) The requirements of this section are set out in subsections (2) and (3).

(2) The first requirement is that the traffic commissioner is satisfied that the applicant—

- (a) has an effective and stable establishment in Great Britain (as determined in accordance with Article 5 of the 2009 Regulation),
- (b) is of good repute (as determined in accordance with paragraphs 1 to 5 of Schedule 3),
- (c) has appropriate financial standing (as determined in accordance with Article 7 of the 2009 Regulation), and
- (d) is professionally competent (as determined in accordance with paragraphs 8 to 13 of Schedule 3).

(3) The second requirement is that the traffic commissioner is satisfied that the applicant has designated a transport manager in accordance with Article 4 of the 2009 Regulation who—

- (a) is of good repute (as determined in accordance with paragraphs 1 to 5 of Schedule 3),
- (b) is professionally competent (as determined in accordance with paragraph 13 of Schedule 3), and
- (c) in the case of a transport manager designated under Article 4.2 of the 2009 Regulation—
 - (i) is not prohibited from being so designated by the traffic commissioner, and
 - (ii) is not designated to act as transport manager for a greater number of road transport undertakings or in respect of a greater number of vehicles than the traffic commissioner considers appropriate, having regard to the upper limits in Article 4.2(c) of the 2009 Regulation, or such smaller number as the commissioner considers appropriate (see Article 4.3 of the Regulation).

Requirements for restricted licences

13B. The requirement of this section is that the applicant is not unfit to hold an operator's licence by reason of—

- (a) any activities or convictions of which particulars may be required to be given under section 8(4) by virtue of paragraph 1(e) or (f) of Schedule 2;
- (b) any conviction required to be notified in accordance with section 9(1) (convictions etc required to be notified subsequent to the making of an application).

Requirements for standard and restricted licences

13C.—(1) The requirements of this section are that it must be possible (taking into account the traffic commissioner’s powers under section 15(3) to issue a licence in terms that differ from those applied for) to issue a licence in relation to which subsections (2) to (6) will apply.

(2) There must be satisfactory arrangements for securing that the following are complied with in the case of vehicles used under the licence—

- (a) Part 6 of the Transport Act 1968 (drivers’ hours);
- (b) the applicable Community rules, within the meaning of that Part.

(3) There must be satisfactory arrangements for securing that vehicles used under the licence are not overloaded.

(4) There must be satisfactory facilities and arrangements for maintaining the vehicles used under the licence in a fit and serviceable condition.

(5) The licence must specify at least one place in the traffic commissioner’s area as an operating centre of the licence-holder, and each place so specified must be available and suitable for use as an operating centre of the licence-holder (disregarding any respect in which it may be unsuitable on environmental grounds).

(6) The capacity of the place specified as an operating centre (if there is only one) or both or all of the places so specified taken together (if there are more than one) must be sufficient to provide an operating centre for all the vehicles used under the licence.

(7) In considering whether the requirements of subsections (2) to (6) are satisfied, the traffic commissioner may take into account any undertakings given by the applicant (or procured by the applicant to be given) for the purposes of the application, and may assume that those undertakings will be fulfilled.

(8) In considering whether subsection (5) will apply in relation to a licence, the traffic commissioner may take into account any conditions that could be attached to the licence under section 21 (conditions for securing road safety) and may assume that any conditions so attached will not be contravened.

(9) In considering whether subsection (5) or (6) will apply in relation to a licence, the traffic commissioner may take into account (if this is the case) that any proposed operating centre of the applicant would be used—

- (a) as an operating centre of the holders of other operators’ licences as well as an operating centre of the applicant; or
- (b) by the applicant or by other persons for purposes other than keeping vehicles used under the licence.

Further requirement for standard and restricted licences

13D. The requirement of this section is that the provision of the facilities and arrangements for maintaining the vehicles in a fit and serviceable condition (see section 13C(4)) is not prejudiced by reason of the applicant’s having insufficient financial resources for that purpose”.

6.—(1) Section 15 (issue of operators’ licences) is amended as follows.

(2) In subsection (2)—

- (a) for “subsection (5) or (6) of section 13” substitute “section 13C or 13D”;
- (b) for “that section” substitute “section 13”.

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(3) In subsection (4), for “section 13(8)” substitute “section 13C(7)”.

7. In section 17 (variation of operators’ licences), in subsection (5)(c), for “section 13” substitute “sections 13 to 13D”.

8.—(1) Section 22 (conditions as to matters required to be notified to traffic commissioner) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (a), for “section 13(3)” substitute “section 13A(2)”;

(b) in paragraph (b)—

(i) omit “relevant”;

(ii) for “section 13(3)(a) or (c)” substitute “section 13A(3)”;

(c) omit subsection (3);

(d) in subsection (6), for “level 4” substitute “level 5”.

9. In section 24 (interim operators’ licences)—

(a) after subsection (7) insert—

“(7A) A request for the issuing of an interim standard licence—

(a) shall not be treated as an application for an operator’s licence for the purposes of section 10, 11, 12, 14, 15(1) to (4), 36 or 37 or Schedule 4, but

(b) shall be treated as such an application for the purposes of any other provision of this Act.”;

(b) in subsection (8), after “interim” insert “restricted”.

10.—(1) Section 27 (revocation of standard licences) is amended as follows.

(2) In subsection (1), for the words from “the licence-holder” to the end, substitute—

“(a) the licence-holder no longer satisfies the requirements of section 13A(2), or

(b) the transport manager designated in accordance with Article 4 of the 2009 Regulation no longer satisfies the requirements of section 13A(3)”.

(3) After subsection (3), insert—

“(3A) A notice under subsection (2) may set a time limit, in accordance with Article 13.1 of the 2009 Regulation, for the licence-holder to rectify the situation.

(3B) If the licence-holder rectifies the situation within the time limit set under subsection (3A), the traffic commissioner must not make the direction under subsection (1).”

(4) In subsection (4), for “subsection (3)” substitute “subsections (3) to (3B)”.

11.—(1) Section 35 (power of traffic commissioners to hold inquiries) is amended as follows.

(2) In subsection (1), at the end insert “or the 2009 Regulation”.

(3) In subsection (2)—

(a) for “section 26, 27 or 28” substitute “this Act or the 2009 Regulation”;

(b) after “29(1)” insert “or paragraph 15(1)(d) or 17(4)(c) of Schedule 3”.

(4) In subsection (3), after “this Act” insert “or the 2009 Regulation”.

(5) In subsection (4)—

(a) in paragraph (b), after “this Act” insert “or the 2009 Regulation”;

(b) in paragraph (c), after “this Act” insert “or the 2009 Regulation”.

12. In section 38 (forgery of documents, etc), in subsection (2)(e), after “paragraph 13(1)” insert “or (1A)”.
13. In section 39 (false statements), in subsection (1)(e), after “paragraph 13(1)” insert “or (1A)”.
14. In section 43 (evidence by certificate), in subsection (2), after paragraph (h) insert—
 - “(ha) that a person is by virtue of an order of the commissioner disqualified from acting as a transport manager, either indefinitely or for a specified period (see paragraph 16 of Schedule 3);”.
15. In section 44 (assessors), in subsection (1), after “this Act” insert “or the 2009 Regulation”.
16. In section 46 (holding companies and subsidiaries), in subsection (3)—
 - (a) in the opening words, omit the words from “(which” to “1984”;
 - (b) in paragraph (a), for “13(3)” substitute “13A”.
17. In section 49 (certificates of qualification)—
 - (a) in subsection (2)(b), for the words from “Article 3” to the end substitute “Article 19, 20 or (as the case may be) 21 of the 2009 Regulation.”;
 - (b) in subsection (5), for “the 1974 Council Directive” substitute “the 2009 Regulation”.
- 18.—(1) Section 58(1) (general interpretation) is amended as follows.
 - (2) Omit the definitions of “the 1974 Council Directive” and “the 1977 Council Directive”.
 - (3) In the definition of “international transport operations” and “national transport operations” for “the 1974 Council Directive” substitute “the 2009 Regulation”.
 - (4) After the definition of “prescribed” insert—

““the 2009 Regulation” means Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC;”.
 - (5) For the definition of “transport manager” substitute—

““transport manager” has the same meaning as in the 2009 Regulation;”.
- 19.—(1) Schedule 1 (meaning of “small goods vehicle”) is amended as follows.
 - (2) Omit paragraph 1.
 - (3) Before paragraph 2 insert—

“1A. A goods vehicle falls within this paragraph if the vehicle, or a vehicle combination including the vehicle, has a permissible laden mass not exceeding 3.5 tonnes”.
- 20.—(1) Schedule 3 (qualifications for standard licence) is amended as follows.
 - (2) Omit paragraph 6.
 - (3) Omit paragraphs 10 and 11.
 - (4) In paragraph 12, for “paragraphs 8 to 11” substitute “paragraphs 8 and 9”.
 - (5) In paragraph 13 (requirements for professional competence)—
 - (a) after sub-paragraph (1) insert—

“(1A) The approved body may exempt an individual from certain parts of the examination mentioned in sub-paragraph (1)(a) if the individual is the holder of a

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- certificate of competence, diploma or other qualification which covers those parts and which is recognised for the purposes of this sub-paragraph by the Secretary of State.”
- (b) in sub-paragraph (2), for “Council Directive No 96/26/EC” substitute “the 2009 Regulation”;
 - (c) in sub-paragraph (2A), for the words from “Annex Ia to that Directive” substitute “Annex 3 to that Regulation and must have security features in compliance with Annex 2 to that Regulation”;
 - (d) in sub-paragraph (3)—
 - (i) in the definition of “approved body”, in paragraph (c), for “Article 3.4 of Council Directive No 96/26/EC” substitute “Article 8.3 of the 2009 Regulation”;
 - (ii) in the definition of “the requisite skills” for “that Directive” substitute “that Regulation”.
- (6) In paragraph 15 (transport manager to be notified of proceedings)—
- (a) in sub-paragraph (1)—
 - (i) in the opening words, after “Act” insert “or under the 2009 Regulation”;
 - (ii) omit “and” at the end of paragraph (b);
 - (iii) after paragraph (c) insert—
 - “and
 - (d) stating that he is entitled to request an inquiry as provided in section 35”.
 - (b) after sub-paragraph (2) insert—
 - “(2A) The traffic commissioner must hold an inquiry as provided in section 35 if the transport manager requests one under sub-paragraph (1)(d)”.
- (7) After paragraph 15 (transport manager to be notified of proceedings) insert—

“Determinations in respect of transport managers

16.—(1) In proceedings under this Act or the 2009 Regulation for determining whether a person who is a transport manager is of good repute or professionally competent, a traffic commissioner must consider whether a finding that the person was no longer of good repute or (as the case may be) professionally competent would constitute a disproportionate response.

(2) If the commissioner determines that the person is no longer of good repute or (as the case may be) professionally competent, the commissioner must order the person to be disqualified (either indefinitely or for such period as the commissioner thinks fit) from acting as a transport manager.

(3) While a disqualification under sub-paragraph (2) is in force—

- (a) the person may not act as transport manager for any road transport undertaking;
- (b) a certificate issued to the person under Article 8.8 of the 2009 Regulation (certificate of professional competence) is not valid.

(4) A person in respect of whom an order has been made under sub-paragraph (2) may appeal to the Upper Tribunal against the order.

(5) The traffic commissioner may direct that an order under sub-paragraph (2) is not to take effect until the expiry of the time within which an appeal may be made to the Upper Tribunal against the order and, if such an appeal is made, until the appeal has been disposed of.

(6) If the traffic commissioner refuses to give a direction under sub-paragraph (5), the person in respect of whom the order has been made may apply to the Upper Tribunal for such a direction.

Transport managers: cancellation or variation of disqualification order

17.—(1) The traffic commissioner by whom a disqualification order is made under paragraph 16(2) may, subject to sub-paragraph (2), at any time cancel the order or, with the consent of the disqualified person, vary the order.

(2) The traffic commissioner by whom a disqualification order is made under paragraph 16(2) may specify measures with which the disqualified person must comply before the order can be cancelled or varied.

(3) Measures specified under sub-paragraph (2) may be varied by the traffic commissioner—

- (a) on the application of the disqualified person, or
- (b) by the traffic commissioner.

(4) Before making a variation under sub-paragraph (3)(b), the traffic commissioner must serve a notice on the disqualified person—

- (a) stating the traffic commissioner’s intention to vary the measures specified under sub-paragraph (2);
- (b) stating that the person is entitled to make representations under sub-paragraph (5) within 28 days beginning with the date on which the notice is served on the person, and
- (c) stating that the person is entitled to request an inquiry as provided in section 35.

(5) Where a person makes representations under this sub-paragraph, the traffic commissioner must consider the representations in deciding whether to vary the measures specified under sub-paragraph (2).

(6) The traffic commissioner must hold an inquiry as provided in section 35 if the disqualified person requests one under sub-paragraph (4)(c).

(7) A notice shall be deemed for the purposes of sub-paragraph (4) to have been served on a person on the date on which it would have been delivered in the ordinary course of post if it was sent by post addressed to the person at the person’s last known address, notwithstanding that the notice was returned as undelivered or was for any other reason not received by the person.”.

(8) In the heading, in the shoulder reference, for “13” substitute “13A”.

21. In Schedule 4 (transfer of operating centres), in paragraph 2—

- (a) in sub-paragraph (3), for “section 13(5)(d)” substitute “section 13C(5)”; and
- (b) in sub-paragraph (4), for “section 13(11)” substitute “section 13(6)”.