

## SCHEDULE 1

### Amendments to the Public Passenger Vehicles Act 1981 and the Transport Act 1985

#### Amendments to the Public Passenger Vehicles Act 1981

**11.**—(1) Schedule 3 (supplementary provisions as to qualifications for PSV operators licences) is amended as follows.

- (2) In paragraph 2 (appropriate financial standing)—
  - (a) in sub-paragraph (1), for “a PSV operators licence” substitute “a restricted licence”;
  - (b) omit sub-paragraph (2).
- (3) Omit paragraph 5.
- (4) In paragraph 6 (professional competence)—
  - (a) in sub-paragraph (1), omit “Subject to paragraph 10 below,”;
  - (b) 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 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.”;
  - (c) in sub-paragraph (2), for “Council Directive No 96/26/EC” substitute “the 2009 Regulation”;
  - (d) in sub-paragraph (3), for “Annex 1a to that Directive” substitute “Annex III to that Regulation and must have security features in compliance with Annex II to that Regulation.”
- (5) In paragraph 7 (professional competence: interpretation)—
  - (a) 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”;
  - (b) in the definition of “requisite skills”, for “that Directive” substitute “that Regulation”.
- (6) After paragraph 7 insert—

#### “Determinations in respect of transport managers

**7A.**—(1) A traffic commissioner must not in any proceedings under this Act or the 2009 Regulation make a finding that a transport manager is not of good repute or is not professionally competent unless the commissioner is satisfied that the transport manager has been served with a notice—

- (a) stating that the question whether the transport manager is of good repute or (as the case may be) professionally competent is an issue in the proceedings;
  - (b) setting out the nature of the allegations against the transport manager;
  - (c) stating that the transport manager is entitled to make representations under this paragraph within 28 days beginning with the date on which the notice is served on the transport manager; and
  - (d) stating that the transport manager is entitled to request an inquiry as provided in section 54.
- (2) Where a transport manager makes representations under this paragraph, the traffic commissioner must consider the representations—

- (a) in considering whether or not to hold an inquiry as provided in section 54; and
- (b) in determining whether the transport manager is of good repute or (as the case may be) professionally competent.

(3) The traffic commissioner must hold an inquiry as provided in section 54 if the transport manager requests one under sub-paragraph (1)(d).

(4) A notice is deemed for the purposes of sub-paragraph (1) to have been served on a transport manager 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 transport manager at the transport manager's last known address, notwithstanding that the notice was returned as undelivered or was for any other reason not received by the transport manager.

**7B.—**(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.

**7C.—**(1) The traffic commissioner by whom a disqualification order is made under paragraph 7B(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 7B(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 54.

(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 54 if the disqualified person requests one under sub-paragraph (4)(c).

(7) A notice is 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".

(7) Omit paragraphs 8 to 10 (and the cross-heading above them).

(8) In the heading, in the shoulder reference, for "14(2)" substitute "14ZA,14ZB".

---

**Commencement Information**

**I1** Sch. 1 para. 11 in force at 4.12.2011, see **reg. 1(1)**

**I2** Sch. 1 para. 1 in force at 4.12.2011, see **reg. 1(1)**

**Changes to legislation:**

There are currently no known outstanding effects for the The Road Transport Operator Regulations 2011, Paragraph 11.