

SCHEDULE 1

Regulation 7(1)

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

Amendments to the Public Passenger Vehicles Act 1981

1. The 1981 Act is amended as specified in paragraphs 2 to 11.
- 2.—(1) Section 12 (PSV operators' licences) is amended as follows.
(2) After subsection (1) insert—

“(1A) Subsection (1) applies in spite of Article 1.4(b) and (c) of the 2009 Regulation (exemptions unless otherwise provided in national law for certain undertakings engaged in road passenger transport services and for slow vehicles), but is subject to section 46 of this Act and section 18 of the Transport Act 1985”.
3. For section 14 substitute—

“Grant of licences

14.—(1) On an application for a standard licence a traffic commissioner must consider whether the requirements of sections 14ZA and 14ZC are satisfied.

(2) On an application for a restricted licence a traffic commissioner must consider whether the requirements of sections 14ZB and 14ZC are satisfied.

(3) If on an application for a PSV operator's licence the traffic commissioner determines that the relevant requirements mentioned in subsection (1) or (2) are satisfied the commissioner must, subject to section 16 (conditions attached to licences), grant the licence in accordance with the application.

Requirements for standard licences

14ZA.—(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 paragraph 1 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 3, 4 and 6 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 paragraph 1 of Schedule 3),
- (b) is professionally competent (as determined in accordance with paragraph 6 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 a traffic commissioner, and

Status: This is the original version (as it was originally made).

- (ii) is not designated to act as transport manager for a greater number of road transport operators 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 2009 Regulation).

Requirements for restricted licences

14ZB. The requirement of this section is that the traffic commissioner is satisfied that the applicant —

- (a) is of good repute (as determined in accordance with paragraph 1 of Schedule 3), and
- (b) has appropriate financial standing (as determined in accordance with paragraph 2 of Schedule 3).

Requirements for standard and restricted licences

14ZC.—(1) The requirement of this section is that the traffic commissioner is satisfied —

- (a) that there will be adequate facilities or arrangements for maintaining in a fit and serviceable condition the vehicles proposed to be used under the licence; and
- (b) that there will be adequate arrangements for securing compliance with the requirements of the law relating to the driving and operation of those vehicles.

(2) In considering whether the requirement of this section is 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 those undertakings will be fulfilled.

(3) Where the traffic commissioner grants an application for a PSV operator's licence, any undertakings taken into account by the commissioner under subsection (2) that the commissioner considers to be material to the granting of the application must be recorded in the licence issued to the applicant".

4. In section 14A (objections to application for PSV operator's licence), in subsection (1) for "section 14(1) and (3)" substitute "sections 14ZA to 14ZC".

5.—(1) Section 16A (conditions as to matters required to be notified) is amended as follows.

(2) In subsection (1)(a), for "section 14(1)" substitute "section 14ZA(2)".

(3) In subsection (1)(b)—

- (a) omit "relevant";
- (b) for "section 14(1)(a) or (c)" substitute "section 14ZA(3)(a) and (b)".

(4) Omit subsection (2).

6.—(1) Section 17 (revocation, suspension etc of licences) is amended as follows.

(2) For subsection (1) substitute—

"(1) The traffic commissioner by whom a standard licence was granted must revoke the licence if it appears to the commissioner at any time that—

- (a) the holder no longer satisfies the requirements of section 14ZA(2), or

- (b) the transport manager designated in accordance with Article 4 of the 2009 Regulation no longer satisfies the requirements of section 14ZA(3).
- (1A) Before revoking a standard licence under subsection (1), the traffic commissioner may serve on the holder a notice setting a time limit, in accordance with Article 13.1 of the 2009 Regulation, for the holder to rectify the situation.
- (1B) If the holder rectifies the situation within the time limit set under subsection (1A), the traffic commissioner must not revoke the licence”.
- (3) In subsection (3)(d), for the words from “the requirement” to the end substitute “the requirements of section 14ZB”.
- (4) Omit subsection (6).
- 7. In section 17A (assessors to assist traffic commissioners), in subsection (1) after “Act” insert “or under the 2009 Regulation”.
- 8. In section 54 (inquiries held by traffic commissioners), in subsection (8)—
 - (a) in paragraph (b), after “below” insert “or under the 2009 Regulation”;
 - (b) in paragraph (c), after “enactment” insert “or the 2009 Regulation”.
- 9. In section 57 (death, bankruptcy etc. of licence holder), after subsection (4) insert—

“(5) In the case of a standard licence, subsection (4)(a) is subject to Article 13.1 of the 2009 Regulation (time limits for rectification).”
- 10.—(1) Section 82 (general interpretation provisions) is amended as follows.
 - (2) After the definition of “public service vehicle” 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;

“Regulation (EC) 1073/2009” means Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006;”.
 - (3) For the definition of “transport manager” substitute—

““transport manager” has the same meaning as in the 2009 Regulation;”.
- 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.”;

Status: This is the original version (as it was originally made).

- (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".

Amendment of the Transport Act 1985

12.—(1) The Transport Act 1985 is amended as specified in sub-paragraph (2).

(2) In section 28 (power to disqualify PSV operators), in subsection (2)(b), for "section 14(4)" substitute "section 14(3)".