

OCCUPATIONAL

December 2011 will see commercial vehicle operators having to deal with more reforms to the way they run their businesses. Following EC Regulations passed in 2009, with the sub heading 'access to the occupation of road transport operator', changes will be introduced to the operators licensing system, affecting standard national and international licence holders for both goods and passenger vehicles. Fortunately, restricted licence holders are not affected, but many in the industry sense that it will only be a matter of time before some of what follows below spills over to this more specialist transport area.

The consultation period run by the British government on the new rules has just closed and the draft legislation is expected to be published later this summer. We may still be awaiting the exact and final detail as to how the changes will be implemented, but we do know from the European regulations what the changes will be.

The fact is these regulations will have a big impact on transport managers and the professional competence qualification. There will also be a substantial amendment to how financial standing is calculated. Further changes will see the introduction of establishment addresses, the requirement to have core business documents stored at certain locations and a demand that all operators must have at least one vehicle in possession. There will also be some general housekeeping with regards to certain offences, including the use of public service vehicles without an O-licence and any failure to declare convictions to the traffic commissioner. Finally, a series of national registers will also be introduced.

Management issues

Dealing first with the issue of transport managers, the new regulations will look to introduce two different types of role. Transport managers will be considered to be either internal or external managers. An internal manager must have a genuine link to the operator as an employee, director or owner of the business. If there is no such internal transport manager, then an external manager will have to be engaged. This external transport manager must have a contract specifying his transport manager duties (and the regulations will describe the exact topics to be covered in such a contract) and not work for more than four operators,



with a combined vehicle fleet of no more than 50 vehicles.

Regardless of whether the transport manager is an internal or external appointment, he or she must still have effective and continuous responsibility for the transport operations of the business and they must perform this role for the operator. Furthermore, they must be resident in an EU country. A new

HAZARDS

As more changes for operator licence holders loom at the end of the year, Andrew Woolfall from Backhouse Jones asks: Is your business ready?

national register will be created, listing all nominated transport managers and, if such a person loses their own 'good repute', a traffic commissioner will be able to have this endorsed on the register, thus preventing the manager from working for anybody else within Great Britain or even across Europe. A new list of offences will be created which, if committed by a transport manager, will lead to the automatic loss of good repute of the individual.

In addition to having good repute, transport managers will still have to hold some form of professional competence qualification. However, the basis of this qualification will also change, as from 4 December 2011, to being either an approved CPC or an approved alternative qualification. 'Grandfather rights' will be gradually phased out and, whilst they remain valid, be subject to tighter qualification.

All new CPC examinations after December 2011 will be a combined national and international qualification. There will only be one type of CPC from that point onwards. National CPCs issued prior to December 2011 will remain valid after that date, as will alternate qualifications issued by some of the professional institutes. However, the rules concerning 'grandfather' rights qualifications will change. Grandfather rights will only continue to

exist, if the holder has continuously managed a business for 10 years. The burden will be on the holder (or applicant) to show this is correct. Department for Transport does not propose to permit any new 'grandfather' rights qualifications to be issued after 4 December 2013. From that point onwards, all new transport managers will have to have passed a CPC examination or have one of the alternate qualifications approved by the DfT.

The changes to the financial standing criteria should see an equal playing field introduced for all operators holding standard national or international type licences across Europe. From December, financial standing will be met by either certified annual accounts or subject to individual member states agreeing some form of financial guarantee, such as an overdraft or invoice finance agreement. New applicants will have to show a certified opening balance.

These new financial rules probably mean that the recently published senior traffic commissioners'

proposed guidelines and directions will have to be substantially changed. The commissioners and their staff will no longer look at bank balances and average balances over a three-month period, but instead refer to audited accounts. Whilst this may be a benefit for some operators, there will be a greater emphasis upon, first, having properly audited accounts (and this will more than likely add to the costs of preparing these accounts) and, second, a need to show that the business does hold the proper assets and have the correct accounting ratios in place.

In a further change, the new regulations will also require operators to have proper establishments – addresses for the purposes of correspondence. The use of PO Box numbers or third party administrators will not be permitted. Operators will also be required to have designated premises for the storage of key documents, such as accounts, personnel and driver's hours and tachograph records. Furthermore, from 4 December 2011, all operators will have to have at least one vehicle specified on their licence. Depending on how the legislation is eventually drafted, this may have a significant impact on those businesses that are 'seasonal' and simply hire vehicles in when their use is required.

Taking the register

In order to assist cooperation between the various European enforcement authorities and hopefully to introduce a level playing field across all operators, all the national governments across the EC will be required to introduce formal registers of operators and transport managers. These registers will include details of vehicle authorisations and also a note of serious convictions recorded against the operator and/or transport manager.

Finally, the legislation will look to increase several penalties for PSV operators. There will be increased fines for PSV operators that are using a vehicle without a licence and failing to declare convictions to the traffic commissioners' office. These existing offences will see the fines increased from £2,500 up to £5,000 for each infringement.

The changes with regards to transport managers, financial standing and establishment addresses could well have a significant impact on most operators. Standard national or international licence holders are therefore advised to begin reviewing arrangements as soon as possible. **TE**

