

Regime change

With the new regime for accrediting operators and transport managers fast approaching, Brian Tinham establishes key issues and required actions

As most transport engineers should know by now, new 'O' licence regulations come into force on 4 December this year – and there are changes that affect both operators and their transport managers, who assure the authorities of professional competence. Most important for transport managers: first, there is a new CPC (certificate of professional competence) examination, with urgent requirements for those wishing to maintain 'grandfather' rights; and second, their formal role

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becomes even more pivotal, in the eyes of the Traffic Commissioners.

First some background: the new legislation is driven by EC 1071/2009, which includes a requirement for all European member states to establish a national register of operators, as already exists in the UK. Roads Minister Mike Penning is pleased with that aspect and with the fact that all member states will also be required to act on information from UK enforcement agencies when operators commit infringements.

"The operator licensing system exists to make sure that the buses, lorries and coaches using our roads are operated safely and legally," he says. "These new EU measures will help to level the playing field for UK operators by making sure that there are effective mechanisms in all member states to allow enforcement agencies to report illegal activity by foreign vehicles."

But while the DfT suggests that the UK's implementation of the new EU rules "will help to strengthen the operator licensing system and improve road safety, without imposing unnecessary burdens on industry", some operators and transport managers are going to find themselves impacted in several ways beyond those mentioned by the minister. As Tim Ridyard, road transport and logistics lawyer at solicitors Woodfines, puts it: "Broadly speaking, the changes include matters affecting financial standing rules, repute and professional competence – CPC examinations, third party qualifications and grandfather rights."

For transport managers, Ridyard points initially to the importance of understanding that, under EC 1071/2009, the DfT draws a distinction between 'internal' and 'external' managers. "For you to be classed as an internal transport manager, you must have a genuine link to the licence holder," he states. "This requirement will be met, if: you are the licence holder and the transport manager; you are one of the partners and the transport manager; or you are a director and the transport manager." And he adds that transport managers are also likely to meet the criteria, if they are full-time or part-time employees.

As for external transport managers, these are individuals hired to fulfil the role under contract. And here the key point is that they will now be subject to the '4/50 rule'. "That means they may not engage in work for more than four operators, with a combined fleet of 50 authorised vehicles," explains Ridyard.

That said, it is possible to be an internal transport manager for one operator and an external transport manager for another – although there is some doubt about the detail. "Ultimately, it will always be a matter for the Traffic Commissioner to determine whether any transport manager can properly supervise more than one licence," advises Ridyard.

Most urgent, though, for transport managers with grandfather CPC exemptions rights is understanding



IRTE members and 'grandfather rights'

Transport managers with third party qualifications – for example, IRTE members with their old part C certificates – retain CPC examination exemption. However, they must obtain a new exemption certificate prior to 4 December 2011 from their authorising bodies. They need that to respond to the notice from the OTC (Office of the Traffic Commissioner), which wrote recently to all operator licence holders, requesting details of their transport managers and exemption holders – including exemption certificate numbers.

For IRTE members, this goes back more than a decade. EC Directive 98/76 EC required the UK and other member states to amend national legislation by 1 October 1999 for both goods and passenger service vehicles. At the time, qualifying IRTE members were able to preserve CPC exemption rights by completing an application form attached to the annual renewal notice for 2000. Hence the SOE's (Society of Operations Engineers, the umbrella organisation for IRTE) register of qualifying IRTE members.

Fast forward and now, with EU 1071/2009 coming into force, all IRTE members on the CPC exemption register should have applied for new exemption certificates. "We have already contacted all qualifying IRTE members and all of these who have applied will be receiving new exemption certificates," comments Ian Chisholm, head of operations and communications at SOE. "We are using this information to establish a new national register, detailing every CPC exemption holder, to enable VOSA to build its database."

that these must be renewed before the 4 December deadline. "A new 'acquired rights' certificate will automatically be issued by the DfT to transport managers with grandfather rights currently listed on an operator's licence – but only if they return the questionnaire," warns Ridyard. [You should already have received forms from VOSA (the Vehicle and Operators Services Agency): see panel right.]

Note that, under the regulation, new acquired rights certificates can only be held by transport managers able to prove that they have 'continuously managed' a road haulage or passenger transport operation over the 10 years ending 4 December 2009. Incidentally, grandfather rights holders not currently listed as transport managers on an operator's licence can still apply to have their rights renewed. The DfT is advising anyone in doubt to contact Steve Blackmore at the DfT in Marsham Street, London, via freight@dft.gsi.gov.uk, with the

And another thing

Apart from subtle changes for licence holding operators, such as a requirement to prove ongoing financial standing – including providing annual accounts to the OTC (Office of the Traffic Commissioner), if asked – and being able to demonstrate that they have access to at least one commercial vehicle, there is one change affecting vehicle weights.

The small trailer exemption is being abolished. So, whereas to date trailers having an unladen weight not exceeding 1,020kg have not been included when calculating the 3.5 tonne operators' licence limit for small goods vehicles, after 4 December it will have to be taken into account.

subject line: GFR Acquired Rights.

Moving on, although existing CPCs remain valid, from 4 December transport managers will be required to have an international CPC qualification. "This applies, even if they are to be nominated on a standard national licence," comments Ridyard. Why? Because the national CPC will cease to exist from 4 December, and the new CPC examination will cover national and international operations. Incidentally, national CPC holders wanting to move up to international status will be able to convert by taking one additional examination.

Finally – and returning to the pivotal role promised for transport managers – part of the new EC regulation paves the way for action to be taken directly against transport managers by Traffic Commissioners. Ridyard explains that, whereas currently a transport manager is only summoned to a public inquiry with the operator, under the new UK regulations powers will allow transport managers to be declared unfit for a licence in any EU member state, or to specify 'rehabilitation measures' – meaning retraining.

So, be warned: transport managers' professional competence may well be challenged, in the event of situations escalating to the attention of the Traffic Commissioners. Whether you sit the new CPC examinations or simply take the new acquired rights route, you need to know your stuff and be ready to defend yourself, should the need arise. **TE**