

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 0000 of 00 January, 2000

LEGAL NOTICE NO. 97 OF 1995.

TRAFFIC ACT

INTERPRETATION AND GENERAL CLAUSES ACT

TRAFFIC (ROAD HAULAGE OPERATOR LICENCES AND COMMUNITY AUTHORISATIONS AND RECOGNITION OF CERTIFICATES AND QUALIFICATIONS) REGULATIONS 1995

In exercise of the powers conferred on it by section 23 of the Interpretation and General Clauses Act, and of all other enabling powers, and for the purpose of transposing into the national law of Gibraltar Council Directives 65/269/EEC (as amended by Council Directives 73/169/EEC, 83/572/EEC and 85/505/EEC), 74/561/EEC (as amended by Council Directives 80/1178/EEC, 85/578/EEC and 89/438/EC and Council Regulation No. EEC/3521/90), and 77/796/EEC (as amended by Council Directives 80/1180, 85/579/EEC and 89/438/EEC), and for giving proper effect to Council Regulation (EEC) No. 881/92 the Government has made the following regulations —

Title.

1. These regulations may be cited as the Traffic (Road Haulage Operator Licences and Community Authorisations and Recognition of Certificates and Qualifications) Regulations 1995 and shall come into effect on the 22nd day of June 1995.

Amendment to the Traffic Act.

2. The Traffic Act is amended —

- (a) in section 2 in the proviso to the definition “road haulage operator licence” by —

- (i) omitting the words “where such activity is undertaken by a person on his own account, that is to say where the following conditions are satisfied”;
- (ii) inserting after the dash now appearing after the word “required” the following paragraph —
 - “(a) where such activity is undertaken by a person on his own account, that is to say where the following conditions are satisfied —”;
- (iii) redesignating paragraphs (a) to (e) as sub-paragraphs (i) to (v);
- (iv) inserting after sub-paragraph (v), as now so designated, the word “or” and the following paragraph —
 - “(b) where a company (“the first company”) carries goods for hire or reward and those goods are the property of another company (“the second company”) where the second company is either —
 - (i) a subsidiary of the first company; or
 - (ii) a holding company for the first company; or
 - (iii) a subsidiary of a company which is a holding company for that subsidiary and for the first company;”;
- (b) in section 73A —
 - (i) in sub-section (1)(a) by inserting after the word “thereof” the expression “unless the vehicle is exempted by virtue of sub-section (4)”;
 - (ii) in sub-section (2) —
 - (aa) after the words “police officer” where those words appear for the first time by inserting a comma and the words “an officer of the Commission, a person nominated under section 46B(1)(b) or an inspector appointed under section 10 of the Shop Hours Act”;
 - (bb) after the words “police officer” where those words appear for the second time by inserting a comma and the words “an officer of the Commission, a person nominated under

section 46B(1)(b) or an inspector appointed under section 10 of the Shop Hours Act, as the case may be”;

(iii) by inserting after sub-section (3) the following sub-sections —

“ (4) The requirement of sub-section (1)(a) shall not apply to any class of vehicle mentioned in Part I of Schedule 3.

(5) Sub-section (1) shall not apply to the use of a vehicle falling within category C or C1 in section 16(G) (1) for international carriage by a haulier established elsewhere than Gibraltar in the territory of a member State and not established in Gibraltar.

(6) In sub-section (5) “established”, “haulier” and “international carriage” have the same meaning as in Council Regulation (EEC) No. 881/92 on access to the market in the carriage of goods by road within the Community to or from the territory of a member State or passing across the territory of one or more member States.”;

(c) in section 73I by inserting after the words “any other person” the expression “except as provided for in Schedule 3”;

(d) by inserting after section 73L the following new section —

“Supplementary provisions in respect of road haulage operator licences.

73M. Schedule 3 shall have effect in respect of road haulage operator licences.”

(e) by inserting after section 76 the following sections —

“Issue of documents and certificates for other member States.

76A. (1) Subject to the provisions of this section, on an application by a person who wishes to engage in a road transport undertaking in the territory of a member State other than Gibraltar the Commission shall issue to the applicant a certificate of qualification as to such matters relating to the applicant's repute, professional competence and, where relevant, his financial standing within the meaning of the 1974 Council Directive as —

(a) he is satisfied that he may properly certify, and

- (b) appear to him to be of assistance to the applicant in satisfying the requirements of the law of the other member State as to those requirements.

(2) A certificate of qualification shall be in such form as may be specified by the Commission and shall have effect for the purposes of Article 3 and 4 and shall be the certificate referred to in Article 5.2 of Council Directive EEC/77/796.

(3) A person who makes application to the Commission for a document or certificate falling within sub-section (4), shall provide to the Commission such evidence as the Commission may require for the purpose of establishing the facts to be stated in such document or certificate.

(4) The Commission shall, within one month of being provided with the evidence in sub-section (3) and -

- (a) if it is satisfied that the evidence is sufficient for the purpose, and
- (b) the prescribed fee (if any) has been paid,

issue the document or certificate for which application was made under that sub-section.

(5) Any person having made an application under sub-section (3) who is aggrieved by a failure by the Commission to issue a document or certificate, may appeal to the Supreme Court against such a decision, praying such leave as the case may require.

(6) The prescribed fee referred to in sub-section (4)(b) is £50.00.”;

- (f) by inserting after section 83 the following new Part —

“PART IVA. — COMMUNITY AUTHORISATIONS.

Purpose and interpretation.

83A. (1) This Part implements Council Regulation (EEC) No. 881/92 on access to the market in the carriage of goods by road within the Community to or from the territory of a member State or passing across the territory of one or more member States.

- (2) In this Part —

“actual holder” in relation to a person established as a haulier in Gibraltar, has the meaning which it bears in paragraph 30(1) of Schedule 3;

“Community authorisation” means a Community authorisation issued under the Council Regulation;

“competent authority” means the Commission;

“the Council Regulation” means Council Regulation (EEC) No. 881/92;

“the First Council Directive” means the First Council Directive of 23 July 1962 on the establishment of common rules for certain types of carriage of goods by road;

“operating centre” has the meaning which it bears in paragraph 16(2) of Schedule 3;

“road haulage operator licence” means an operator licence within the meaning of section 73A(1)(b);

and, subject thereto, expressions used which are also used in the Council Regulation have the meaning which they bear in that Regulation.

Use of goods vehicle without Community authorisation.

83B. A person who uses a vehicle in Gibraltar in contravention of Article 3.1 of the Council Regulation shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Entitlement to the issue of Community authorisation.

83C. (1) A person established as a haulier in Gibraltar shall be entitled on payment of the prescribed fee (if any) to be issued with a Community authorisation under Article 3.2 of the Council Regulation if he holds a road haulage operator licence covering international transport operations.

(2) For the purposes of sub-section (1), “international transport operations” has the meaning which it bears paragraph 1 of Schedule 3.

Rights of appeal.

83D. A person who —

- (a) being entitled to be issued with a Community authorisation under section 83C, is aggrieved by the refusal of the competent authority to issue such authorisation to him, or
- (b) being the holder of a Community authorisation, is aggrieved by the decision of the competent authority to withdraw it,

may appeal to the Supreme Court praying such leave as the case may require.

Effect of failure to comply with conditions governing use of Community authorisation.

83E. A person who uses a vehicle in Gibraltar under a Community authorisation and, without reasonable excuse, fails to comply with any of the conditions governing the use of that authorisation under the Council Regulation shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Authorised inspecting officers.

83F. Authorised inspecting officers for the purposes of the Council Regulation shall be a police officer, an officer of the Commission, a person nominated under section 46B(1)(b) or an inspector appointed under section 10 of the Shop Hours Act.

Return of documents.

83G. (1) The holder of a Community authorisation which is withdrawn by the competent authority in accordance with Article 8.2 of the Council Regulation shall within 7 days of such withdrawal return to the competent authority the original authorisation and all certified true copies of it.

(2) The holder of a Community authorisation shall return to the competent authority such certified true copies of the authorisation as the authority may require pursuant to any reduction in the number of vehicles at the disposal of the holder or any decision of the authority under Article 8.3 of the Council Regulation to suspend certified true copies of that authorisation.

(3) A person who, without reasonable excuse, fails to comply with any provision of sub-sections (1) or (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Supply of information.

83H. (1) The holder of a Community authorisation shall furnish such information as the competent authority may reasonably require from time to time to enable the authority to decide whether the holder is entitled to retain that authorisation.

(2) A person who, without reasonable excuse, fails to supply any information required under sub-section (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Death, bankruptcy etc. of holder of Community authorisation.

83J. Where a person is treated as the holder of a road haulage operator licence by virtue of a direction under paragraph 30 of Schedule 3 such person shall also be treated as the holder of any Community authorisation held by the actual holder of that road haulage operator licence, for the same period as is specified in that direction or that paragraph.

Offences by corporations etc.

83K. (1) Where an offence under this Part has been committed by a body corporate and it is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, sub-section (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) A fine imposed on an unincorporated association on its conviction for an offence shall be paid out of the funds of the association.

(4) Where an offence under this Part committed by a partnership is proved to have been committed with the consent or connivance of, or to have been attributable

to any neglect on the part of a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.”;

(g) by inserting after Schedule 2 the following new Schedule —

“SCHEDULE 3

Section 73M.

ROAD HAULAGE OPERATOR LICENCES, QUALIFICATION AND FEES

1. Interpretation.

(1) In this Schedule, unless the context shall otherwise require —

“application for a licence” means an application for a licence falling within section 73A(1), “application for the renewal of a licence” means an application for the renewal of a licence under section 73H and “application for amendment of a licence” means an application for the amendment of a licence under section 73J, and “application” when used otherwise than as part of those expressions means —

- (a) an application for a licence, or
- (b) an application for the renewal of a licence, or
- (c) an application for amendment to a licence;

“company”, “holding company” and “subsidiary” shall be construed as provided in the Companies Act;

“disc” means a disc issued in accordance with paragraph 21 (1) and (2) or 29 (2);

“holder” in relation to a licence means the person to whom the licence was granted;

“international transport operation” has the same meaning as in the 1974 Council Directive, and the expression “national transport operation” shall be construed accordingly;

“keeper” in relation to a vehicle is the person in whose name the vehicle is registered under section 6;

“licence” means a road haulage operator licence as defined in section 73A(1)(a);

“maintenance” in relation to a vehicle includes inspection, repair and fueling;

“relevant conviction” means any conviction in respect of an offence which is a serious offence as defined in sub-paragraph (3)(a) and (b) of paragraph 9 or a road transport offence as defined in sub-paragraph (3)(c) of that paragraph;

“road transport undertaking” means an undertaking which involves the use of goods vehicles under a licence, or in accordance with the law of any territory of a member State

“the 1974 Council Directive” means Council Directive (EEC/74/561) on admission to the occupation of road haulage operator in national and international transport operations as amended by Council Directives 80/1178/EEC, 85/578/EEC and 89/438/EEC;

“the 1977 Council Directive” means Council Directive (EEC) 77/796 aiming at the mutual recognition of diplomas, certificates and other evidence of formal qualifications for goods haulage operators and road passenger transport operators, including measures intending to encourage these operators effectively to exercise their right to freedom of establishment as amended by Council Directives 80/1180/EEC, 85/579/EEC and 89/438/EEC;

“transport manager”, in relation to a business, means an individual who is in, or who is engaged to enter into, the employment of the holder of a licence and who, either alone or jointly, with one or more other persons, has continuous and effective responsibility for the management of the transport operations of the business in so far as they relate to the carriage of goods.

(2) For the purpose of this Schedule a person who is an applicant for, or a holder of, a licence, or who is a transport manager, shall be regarded as being engaged in a road transport undertaking if the person in question is —

- (a) the holder or, if an individual, one of the joint holders, of a licence, or
- (b) the subsidiary of the holder of a licence being a subsidiary to which goods vehicles used under the licence belong or in whose possession they are, or

- (c) if an individual, in the employment of a person who carries on a road transport undertaking and which gives the individual responsibility for the operation of goods vehicles used under a licence.

(3) For the purposes of this Schedule, the driver of a vehicle, if it belongs to him or is in his possession under an agreement for hire, hire purchase or loan, and in any other case the person whose servant or agent the driver is, shall be regarded as the person using the vehicle and references to using the vehicle shall be construed accordingly.

2. Classification of road haulage operator licences.

(1) Licences may authorise goods vehicles to be used for the carriage of goods —

- (a) on both international and national transport operations, or
- (b) on national transport operations only.

(2) A statement shall appear on the face of each licence indicating whether it covers both international and national transport operations or national transport operations only.

3. Manner of applications and manner of objections and representations

(1) Every application shall —

- (a) be made on a form supplied by the Commission and contain the information required by that form;
- (b) be signed —

(i) if made by an individual person, by that individual,

(ii) if made by a body corporate, by an individual person authorised for the purpose by the body or under its common seal, and

(iii) if made by persons in partnership, by one of the partners with the authority of the others;

(c) if made for the grant of a licence, state whether the licence is to cover —

(i) both national transport operations and international operations, or

(ii) national transport operations only.

(2) The production of evidence for the purposes of sections 73A to 73K and this Schedule shall be subject to the provisions of Council Directive 77/796 where the applicant or a transport manager is a national of another member State to which that Directive applies.

(3) The manner in which an objection to, or a representation about, an application shall be made is that it shall —

(a) be written;

(b) be signed —

(i) if made by an individual, by that person;

(ii) if made by any other body or group of persons, by one or more individual persons authorised for that purpose by the body or group;

(iii) if made by persons in partnership, by all of the partners or by one of them with the authority of the others;

or, in any of the above cases, by a solicitor acting on behalf of (as the case may be) the person, body or group; and

(c) state the grounds on which it is made.

(4) A copy of every objection or representation shall be sent by the objector, or the person making the representation, to the applicant at the same time as it is sent to the Commission.

4. Time of applications.

(1) Every application shall be sent to the Commission so as to reach it not less than eight weeks before the time at which the applicant desires the licence, renewal or amendment applied for to take effect.

(2) An application shall be deemed to be made on the date on which it is received by the Commission.

5. Dispensations as to applications.

The Commission may consider applications notwithstanding that the requirement specified in paragraph 4(1) has not been complied with.

6. Restriction on applications.

(1) No person shall make an application for a licence to the Commission while another application for a licence by him to the Commission has not been disposed of.

(2) No person shall include in any application any vehicle —

(a) which is specified in —

(i) an existing licence unless the application is for a licence to replace the licence in which the vehicle is specified or is for the purpose of having the vehicle deleted from one licence and added to another;

(ii) another application which is still under consideration by the Commission unless the applications are for the purpose of having the vehicle deleted from one licence and added to another; or

(iii) a licence which was issued to him but which has been suspended under section 73F;

(b) which has ceased to be an authorised vehicle under a licence which was issued to him but which is the subject of conditions under section 73F or 73J.

7. Inspections of applications.

(1) The Commission shall, until an application has been determined make available for inspection —

(a) to any person authorised to make the inspection by the Licensing Authority, the Commissioner of Police or any other public body, such part of the application (or the whole of it) as any such person in writing requests to see; and

- (b) to any person who is, by virtue of section 73B(4) entitled to make representations in respect of the application, or a person authorised by such a person to make the inspection on his behalf, such part of the application as is, in the opinion of the Commission, relevant to the representation.
- (2) The Commission shall, during the currency of the licence, make a copy of it available for inspection by any person who appears to the Commission to have reasonable grounds for making such an inspection.
- (3) The Commission shall satisfy its obligation under sub-paragraph (1) by —
 - (a) making the application or, as the case may be, part of it, available for inspection at its offices, or
 - (b) on prior receipt of its expenses in that behalf, by posting a copy of the application or, as the case may be, part of it, to the address given for that purpose by the person wanting to make the inspection.
- (4) The Commission shall satisfy its obligation under sub-paragraph (2) by —
 - (a) making a copy of the licence or, as the case may require, part of it, available for inspection at its offices, or
 - (b) on prior receipt of its expenses in that behalf, by posting a copy of the licence or, as the case may require, part of it, to the address given for that purpose by the person requesting to make the inspection.

8. Qualifications of applicants.

- (1) The provisions of paragraphs 9, 10 and 11 apply for the purpose of supplementing the provisions of section 73D(c) in respect of an application for a licence.
- (2) Where particulars of a transport manager are, in accordance with section 73B included in an application, the applicant shall forthwith notify the Commission if there occurs, in the interval between the making of the application and the date on which it is disposed of any event affecting any information given pursuant to that section and for the purposes of sections 73B, 73G(2), 73H and 73J and this sub-paragraph an application shall be taken to be disposed of on the date on which the applicant receives notice of the decision of the Commission.

9. Qualifications for road haulage operator licence —good repute.

(1) In determining whether an individual is of good repute, the Commission shall have regard to any matter, and in particular —

- (a) relevant convictions of the individual and his employees and agents; and
- (b) such other information as the Commission may have as to his previous conduct appearing to relate to his fitness to hold a licence.

(2) In determining whether a company is of good repute, the Commission shall have regard to all the material evidence and in particular to —

- (a) relevant convictions of the company, its officers, employees and agents; and
- (b) such other information as the Commission may have as to previous conduct of —
 - (i) the company's officers, employees and agents appearing to relate to the company's fitness to hold a licence; and
 - (ii) each of the company's directors, in whatever capacity, appearing to relate to the company's fitness to hold a licence.

(3) The Commission shall determine that an individual is not of good repute if he has been convicted —

- (a) of a serious offence,
- (b) of an offence under the Act which has resulted in the exercise by the Commission of its powers under section 73F to suspend or revoke a licence;
- (c) on two or more occasions of road transport offences, that is to say —
 - (i) an offence under the Act relating to drivers' driving and rest periods, the weight and dimension of commercial vehicles, road safety, vehicle safety or falsification of documents;

(ii) an offence under the Employment Act relating to the employment of persons in a business in respect of which an licence is required;

(iii) any corresponding offence under the law of a country or territory outside Gibraltar:

Provided that account shall only be taken of offences falling within (c) in respect of which the person was convicted in the seven years preceding the date of application.

(4) For the purposes of sub-paragraph (3)(a) a serious offence is —

- (a) an offence under the law of Gibraltar for which a sentence of imprisonment for a term exceeding three months or a fine exceeding level 4 on the standard scale was imposed; and
- (b) any corresponding offence under the law of a country or territory outside Gibraltar for which a corresponding punishment was imposed.

(5) In sub-paragraph (4)(a) “a sentence of imprisonment” includes any form of custodial sentence or order other than one under the enactments relating to mental health.

(6) Sub-paragraph (3) is without prejudice to the power of the Commission to determine that an individual is not of good repute for reasons other than convictions of the kind there mentioned.

(7) In this paragraph references to an individual include references to a transport manager as well as to an individual who is an applicant for, or the holder of, a licence.

10. Qualifications for road haulage operator licence — appropriate financial standing

(1) Being of appropriate financial standing in relation to an applicant for, or holder of, a licence consists in having available sufficient financial resources to ensure the establishment and proper administration of the road transport undertaking carried on, or proposed to be carried on, under the licence.

(2) An applicant for, or holder of, a licence authorising the use of vehicles for international transport operations shall not be considered to be of appropriate

financial standing unless he has available capital and reserves of an amount equal to at least —

- (a) 3,000 European Currency Units multiplied by the number of vehicles which are to be or are used under the licence; or
- (b) 140 European Currency Units multiplied by the number of tonnes of the aggregate of the maximum authorised weight of such vehicles,

whichever is the less.

(3) In assessing the financial resources available to an applicant for or a holder of a licence, the Commission shall have regard to —

- (a) the annual accounts, if any, of the applicant or the holder;
- (b) to the extent that they are available for the road transport undertaking in respect of which the application is made or the licence is held —
 - (i) funds available to the applicant or the holder including monies in bank accounts, overdraft and loan facilities;
 - (ii) any assets of the applicant or holder including property and the extent to which such assets are available by way of security;
- (c) the costs to the applicant or the holder of the road transport undertaking in respect of which the application is made or the licence is held including but not limited to —
 - (i) the purchase cost of or initial payment in respect of the vehicles the applicant proposes to operate in the undertaking and in respect of which the licence is to be issued or is issued;
 - (ii) the cost of purchase or rent in respect of premises, plant and equipment used in the operation of the undertaking;
- (d) the amount and cost of working capital adequate in respect of the undertaking.

(4) The applicant or holder shall provide such evidence as the Commission may require for the purpose of establishing that the provisions of sub-paragraph (3) are met, including if so required guarantees by a bank or other similar institution.

(5) The Commission may, in exercise of its power under section 55A, summon to attend or to produce any document or to give evidence, any person who, in the view of the Commission, has in his possession information or documents relevant to determining the financial resources available to an applicant or to a holder of a licence for the purposes of setting up and operating the undertaking in respect of which the application has been made or the licence is held.

(6) Where the holder of a licence varies the vehicles authorised for use in the undertaking and specified in the licence, the amount of financial resources required to satisfy sub-paragraph (3) shall be similarly varied and the Commission shall have regard to the amount so varied.

11. Qualification of applicants — Professional competence.

(1) References in this paragraph to professional competence are to the professional competence of an individual.

(2) A company satisfies a requirement as to professional competence if, and so long as, in respect of its road transport undertaking it has a transport manager, or managers, and such number of them as the Commission may require, who, or if more than one each of whom, is of good repute and professionally competent.

(3) Where an individual is not himself professionally competent, the requirement as to professional competence shall be regarded as satisfied in relation to him if, and so long as, he has a transport manager of his road transport undertaking who is of good repute and professionally competent.

(4) Where the holder of a licence relies on a single transport manager to satisfy the requirement as to professional competence and that manager —

- (a) dies or ceases by reason of physical disability or mental disorder to be capable of discharging his duties as transport manager;
- (b) ceases to work for the business; or
- (c) ceases to be of good repute,

the holder shall nevertheless not be treated as failing to satisfy that requirement until the expiry of such period (not exceeding 18 months) as in the opinion of the Commission is reasonably required for the appointment of a new transport manager.

(5) Where the holder of a licence is a company with two or more transport managers and any of them ceases to be of good repute the company shall nevertheless not be treated as failing to satisfy the requirement as to professional competence until the expiry of such period as in the opinion of the Commission is reasonably required for his removal or the appointment of a transport manager in his place.

(6) An individual shall be regarded as professionally competent for the purposes of this paragraph if, and only if —

- (a) he has demonstrated possession of the requisite skills by passing a written examination, which may take the form of a multiple-choice examination, organised by an approved body and he is the holder of a certificate to that effect issued by that approved body; or
- (b) he is the holder of any other certificate of competence, diploma or other qualifications recognised for the purposes of this sub-paragraph by the Commission.

(7) In sub-paragraph (6) “approved body” means —

- (a) body approved by the Government for the purposes of that sub-paragraph; or
- (b) a body or authority designated by the United Kingdom or another member State for the purposes of Article 3.4 of the 1974 Council Directive;

and “the requisite skills” means skills in the subjects listed in Part A of the Annex to that Directive and, in the case of a licence to cover international operations, also skills in the subjects listed in Part B of that Annex.

12. Death, bankruptcy etc. of applicant or licence holder.

(1) In any event specified in sub-paragraph (3) an application for a licence shall fail save in a case specified in sub-paragraph (4).

(2) In any event specified in sub-paragraph (3) a licence shall cease to have effect save in a case specified in sub-paragraph (4).

(3) The events referred to in sub-paragraph (1) and (2) are —

- (a) where an application is made, or a licence is held, by an individual —
 - (i) he dies, or
 - (ii) a petition has been presented to the court under section 5 of the Bankruptcy Act for the making of a receiving order against him and no absolute order of discharge of such receiving order has been made under section 25 of that Act, or
 - (iii) he becomes a patient within the meaning of Part IV of the Mental Health Act, or
 - (iv) the requirements of professional competence cease to be satisfied;
- (b) where an application is made, or a licence is held, by a body corporate —
 - (i) a petition has been presented to the court under section 158 of the Companies Act for the winding up of the company on the ground that the company is unable to pay its debts, or
 - (ii) the company has resolved by extraordinary resolution that it cannot by reason of its liabilities continue its business, or
 - (iii) a Receiver has been appointed on behalf of the holders of any debentures of the company, secured by a floating charge, or
 - (iv) in the case of a Co-operative Society, a Receiver has been appointed by the Registrar under section 39 (2) of the Co-operative Societies Act, or
 - (v) in the case of a society registered under the Friendly Societies Act, an application has been made to the Registrar under section 72 of that Act for investigation into the affairs of the society, or
 - (vi) the requirements of professional competence cease to be satisfied;
- (c) where an application is made, or a licence is held, by persons in partnership —
 - (i) the partnership is dissolved, or

- (ii) one of such persons becomes a patient, within the meaning of Part IV of the Mental Health Act with the result that only one other of such persons who is not such a patient remains in the firm, or
 - (iii) one of such persons who alone manages the road transport business carried on by the partnership ceases to be a member of the partnership (either by death or otherwise) or becomes a patient within the meaning of Part IV of the Mental Health Act, or
 - (iv) a petition has been presented to the court under section 5 of the Bankruptcy Act for the making of a receiving order against any partner and no absolute order of discharge of such receiving order has been made under section 25 of that Act, or
 - (v) a petition for winding up has been presented to the court under Part VIII of the Companies Act, or
 - (vi) the requirements of professional competence cease to be satisfied.
- (4) The cases referred to in sub-paragraph (1) and (2) are —
- (a) where —
- (i) within 2 months of the event in question, notice that the person to whom the licence was issued has ceased to be the user of the vehicles which are authorised vehicles under the licence, and the reason for such cessation, and of the name of the person by whom the trade or business is being carried on, is sent to the Commission, and
 - (ii) within four months of the sending of such notice, an application for a new licence is made by that person,
- the licence shall, subject to the provisions specified in sub-paragraphs (5) and (6), continue in force for the benefit of that person (who shall so long as the licence so continues be deemed to be the holder thereof;
- (b) where the requirement of professional competence ceases to be satisfied the Commission shall not be required to revoke the licence during such period, not exceeding one year from the date of such cessation, or during such further period, not exceeding six months

from the end of that first period as the Commission may determine and this provision applies to a successor mentioned in (a) as well as to the person to whom the licence was granted.

(5) The provisions of sub paragraph (4)(a) do not apply so as to continue in force a licence beyond the date on which it would have expired but for the occurrence of the relevant event or after the application for the new licence is disposed of.

(6) Where the Commission delays the revocation of the licence, the holder or the person mentioned in sub-paragraph (4)(a) shall take such steps of a temporary or interim nature during the period of the delay as the Commission may specify to ensure the proper conduct of the operation.

(7) Where the licence is in respect of national transport operations and the reason for the revocation is a failure to comply with section 73D(c)(iii) the Commission may exercise a discretion not to revoke the licence provided that the business is operated by an individual with at least three years experience in the day-to-day management of that business.

(8) An applicant for a licence and a holder of a licence shall, if he is so required by the Commission, give to the Commission —

(a) particulars of any activities carried on at any time before the making of the application or the granting of the licence by —

(i) the applicant or the holder, as the case may be;

(ii) any company of which the applicant or the holder, as the case may be, is or has been a director;

(iii) where the applicant or the holder, as the case may be, is a company, any person who is a director of the company;

(iv) where the applicant proposes to operate authorised vehicles, or the holder operates authorised vehicles, as the case may be, in partnership with any other persons, any of those other persons;

(v) any company of which any person as is mentioned in (iii) or (iv) is or has been a director;

- (vi) any company of which the applicant or the holder, as the case may be, is a subsidiary;
- (b) particulars of any convictions during the five years preceding the making of the application or the granting of the licence —
- (i) of the applicant or the holder, as the case may be; and
- (ii) of any other person as to whose activities particulars may be required to be given under (a);
- (c) information from which the Commission may satisfy itself that —
- (i) there will be or are, as the case may be, satisfactory arrangements for securing that sections 46A to 46F will be or are complied with in the case of authorised vehicles and for securing that those vehicles are not overloaded;
- (ii) there will be or are, as the case may be, satisfactory facilities and arrangements for maintaining the authorised vehicles in a fit and serviceable condition and that the place which is to be the operating centre for those vehicles is suitable for the purpose;
- (iii) the provision of such facilities and arrangements as are mentioned in (ii) and of a suitable operating centre will not be prejudiced by reason of the applicant or the holder, as the case may be, having insufficient financial resources for that purpose.

13. Partnerships.

(1) The provisions of sub-paragraph (1) of paragraph 8 shall apply in any case where an applicant for a licence is persons in partnership so that the Commission is required to satisfy itself that —

- (a) every one of such persons is of good repute,
- (b) the firm satisfies the requirement of appropriate financial standing, and
- (c) either —

- (i) if one or more of those persons manage the road transport business carried on by the firm, he, or if more than one each of them, is professionally competent, or
- (ii) the firm employs a transport manager or transport managers who, or if more than one each of whom, is of good repute and professionally competent.

(2) The provisions of sub-paragraph (1) of paragraph 18 shall apply in any case where the holder of a licence is persons in partnership if —

- (a) any one or more of those persons cease to satisfy the requirements to be of good repute, or
- (b) the firm ceases to satisfy the requirement to be of appropriate financial standing, or
- (c) when the requirement as to professional competence is satisfied by one or more of those persons who manage the road transport business carried on by the firm, he, or if more than one each of them, ceases to do so, or when the firm employs a transport manager or transport managers such manager, or if more than one any of them, ceases to be of good repute, or when the firm relies upon the employment of a single transport manager to satisfy the requirement as to professional competence, that transport manager ceases to be employed by the firm.

(3) The provision in paragraph 10 as regards determining whether the applicant for, or the holder of, a licence is of appropriate financial standing shall apply, in the case of persons in partnership, to the financial standing of the firm.

(4) The provision in paragraph 11(2) that a company satisfies the requirement as to professional competence if, and so long as, it has a transport manager or transport managers of its road transport business who, or if more than one each of whom, is of good repute and professionally competent shall apply in the case of persons in partnership so that the firm satisfies the said requirement if, and so long as, each of such persons is of good repute, and either —

- (a) if one or more of those persons manage the road transport business carried on by the partnership, he, or if more than one each of them, is professionally competent, or

(b) the firm employs a transport manager or transport managers of its road transport business who, or if more than one each of whom, is of good repute and professionally competent.

(5) In a case where one or more persons in partnership manage the road transport business carried on by the firm or the firm employs a transport manager or transport managers the provision in paragraph 8 shall apply —

- (a) as regards one such person or a single transport manager employed by the firm as it applies as regards a single transport manager employed by a company, and
- (b) as regards two or more such persons or two or more transport managers employed by the firm as it applies as regards two or more transport managers employed by a company.

(6) In this paragraph “firm” has the same meaning as in section 6 of the Partnership Act.

14. Conditions to be attached to road haulage operator licences.

(1) Subject to sub-paragraph (3), the Commission, when granting a licence, shall attach to the licence —

- (a) a condition requiring the holder of the licence to inform the Commission of any event which could affect the satisfaction by the holder of the requirements of good repute, appropriate financial standing and professional competence, and to do so within 28 days of the event, and
- (b) a condition requiring the holder of the licence to inform the Commission of any event which could affect satisfaction of the requirements of good repute and professional competence by any transport manager employed by that holder and relied on by him to satisfy the requirement of professional competence, and to do so within 28 days of the event coming to that holder's knowledge.

(2) A condition attached by the Commission to a licence under sub-paragraph (1) shall be regarded as having been attached under section 73E.

(3) A condition attached by the Commission to a licence under sub-paragraph (1), in a case where the holder of the licence is a company, shall not require the

holder to inform the Commission of any change in the persons holding shares of the company unless the change is such as to cause a change in the control of the company.

(4) For the purposes of sub-paragraph (3) a change in the control of a company occurs when the controlling interest (as defined in sub-paragraph (5)) passes from one person to another person or from one group of persons to a wholly or substantially different group of persons.

(5) A person holds a controlling interest in a company for the purposes of sub-paragraph (4) if he is the beneficial owner of more than half its equity share capital as defined in the Companies Act.

15. Conditions which may be attached to a road haulage operator licence.

The conditions which may be attached under section 73E and 73F to a licence are conditions regulating —

- (a) the number, type and size of authorised vehicles which may at any one time be at any operating centre of the holder of the licence for the purposes of maintenance and parking;
- (b) the parking arrangements to be provided for authorised vehicles at or in the vicinity of every such operating centre;
- (c) the times between which there may be carried out at every such operating centre any maintenance or movement of any authorised vehicle and the times at which any equipment may be used for any such maintenance or movement; and
- (d) the means of ingress to and egress from every such operating centre for any authorised vehicle.

16. Considerations relevant to suitability of site as an operating centre.

(1) The considerations which the Commission shall take into account in considering the suitability of a site as an operating centre or the conditions relating to the operating centre or its manner of use to be imposed on a licence are —

- (a) the nature and the use of any other land in the vicinity of the land proposed to be used or used as an operating centre, and, in the case

of an application for a licence, any effect which the use of the land as an operating centre, would be likely to have, or the use has on the environment of that vicinity;

- (b) in a case where the land proposed to be used as an operating centre is, or has previously been, used as an operating centre, the extent to which the grant of the application would result in any material change as regards that operating centre, or its use, which would adversely affect the environment of the vicinity of that land;
- (c) in the case of an application which, if granted, would result in land which has not previously been used as an operating centre being used as one, any information known to the Commission about any approved planning scheme, any application for outline planning permission, any such permission granted or any planning permit relating to the land or any other land in the vicinity of that land;
- (d) the number, type and size of authorised vehicles;
- (e) in the case of an application for a licence, the proposed or likely arrangements for the parking of authorised vehicles or the arrangements for such parking;
- (f) in the case of an application for licence, the proposed nature and times of the use of the land proposed to be used for the purpose of an operating centre or the nature and times of the use of the land for the purpose of an operating centre;
- (g) in the case of an application for a licence, the nature and the times of the use of any equipment proposed or likely to be installed on the land proposed to be used as an operating centre for the purpose of the use of that land as an operating centre the nature and times of the use of any equipment installed on the land used as an operating centre for that purpose;
- (h) in the case of an application for a licence, the proposed means and frequency of vehicular ingress to, and egress from, the land proposed to be used as an operating centre or the means and frequency of such ingress to, and egress from, the land used as an operating centre.

- (2) In this paragraph —

“approved planning scheme”, “outline planning permission” and “planning permit” have the meanings given to those expressions in the Town Planning Act;

“authorised vehicles”, in relation to an application for a licence, includes any one or more vehicles which would be authorised vehicles if the application were granted or any one or more vehicles; and

“operating centre” in relation to an application for a licence, includes the place which would be the operating centre if the application were granted and includes part of an operating centre.

17. Variation, review, renewal and amendment of road haulage operator licences.

(1) The provisions of paragraphs 8 and 14 apply to the variation of a licence under section 73E, to the review of a licence under section 73F, to an application to renew a licence under section 73H, to the amending of a licence under section 73J and to the imposition of conditions as those provisions respectively apply to an application for a licence, the decision to grant such a licence and the imposition of conditions on the occasion of the grant of such a licence, and for the purposes of the said application the references in those paragraphs to the application or the applicant for, or the grant of, a licence shall be construed respectively as references to the application or the applicant for such variation, review, renewal or amendment or to the making of such variation, review, renewal or amendment.

(2) If the holder of a licence which covers national transport operations applies for the licence to be amended so that it shall also cover international transport operations —

- (a) the applicant shall include in his application the particulars about professional competence on which he intends to rely, and
- (b) the Commission shall refuse to make the amendment applied for unless satisfied that the professional competence on which the applicant proposes to rely is sufficient for the purposes of international transport operations.

18. Suspension and revocation of road haulage operator licences.

(1) Subject to the provisions of paragraph 12 and 30 and of sub-paragraph (2) the Commission shall suspend or revoke a licence if it appears to the Commission at any time that the holder no longer satisfies the requirement to be of good repute, the

requirement to be of appropriate financial standing or the requirement as to professional competence, and the provisions of paragraphs 9, 10 and 11 shall apply for the purposes of this sub-paragraph as they apply for the purposes of paragraph 8.

(2) Before acting under sub-paragraph (1) the Commission shall in accordance with section 73F(3) give notice in writing to the holder of the licence that it is considering suspension or revocation of the licence, and shall state in the notice the grounds on which suspension or revocation is being considered and that written representations may be made by the holder of the licence to the Commission with respect thereto, so as to be received by the Commission within 21 days from the date of the notice, and the Commission shall consider all such representations duly made.

(3) A licence which has been suspended by the Commission shall during any time of suspension be of no effect.

(4) Where the Commission decides that a licence be revoked, the Commission may as part of that decision disqualify the person who was the holder thereof indefinitely or for such period as the Commission thinks fit from holding or obtaining a licence, and so long as the disqualification is in force —

- (a) notwithstanding sections 73B and 73H, no licence shall be granted to him and any such licence obtained by him shall be of no effect; and
- (b) if he applies for or obtains such a licence he shall be liable on summary conviction to a fine at level 3 on the standard scale.

(5) Where the Commission under paragraph (4) disqualifies a person, the Commission may direct that if that person, at any time or during such period as the Commission may specify —

- (a) is a director of or holds a controlling interest in —
 - (i) a company which holds a licence of the kind to which the disqualification applies;
or
 - (ii) a company of which such a company is a subsidiary; or
- (b) operates any goods vehicles in respect of which a licence is required in partnership with a person who holds such a licence,

the licence of that company, or as the case may be, of that person shall be liable to variation, review, suspension, revocation or amendment.

(6) The powers conferred by paragraphs (4) and (5) in relation to the person who was the holder of the licence shall be exercisable also, where that person was a company, in relation to any director of the company, and, where that person operated the authorised vehicles in partnership with other persons, in relation to any of those other persons.

(7) Where the Commission suspends a licence or imposes conditions which have the effect of removing any vehicle from being an authorised vehicle under the licence —

- (a) in the case of a suspension, any vehicle specified in the licence may not be used under any other licence;
- (b) in the case of conditions removing any vehicle, the vehicle may not be used under any other licence and shall not be capable of being effectively specified in any other licence,

and a suspension or the imposition of conditions under this sub-paragraph shall cease to have effect on such date, not being more than six months after the suspension or imposition of conditions, as may be specified by the Commission or, if it is earlier, on the date on which the licence which was suspended or on which conditions were imposed ceases to be in force.

(8) The Commission may, where it is satisfied that it should do so, cancel a suspension or withdraw any conditions imposed on a licence under the provisions of this paragraph and shall do so where it is satisfied that the holder again satisfies the requirement to be of good repute, the requirement to be of appropriate financial standing or the requirement as to professional competence, and the provisions of paragraphs 9, 10 and 11 shall apply for the purposes of this sub-paragraph as they apply for the purposes of paragraph 8.

19. Written notification of refusal.

Where the Commission refuses an application for the grant of a licence under section 73B, varies the conditions of such a licence under section 73E, suspends or revokes such a licence under section 73F, refuses to renew such a licence under section 73H or amends such a licence under section 73J it shall specify in writing to the applicant or the holder of the licence, as the case may be, the reasons for the refusal, variation, suspension, revocation, refusal to renew or amendment, as the case may require, and shall do so at the time that notice of the decision of the Commission is given to the applicant or holder.

20. Requirement for transport manager to be notified.

(1) The Commission shall not make a finding that a transport manager is not of good repute or is not professionally competent unless the Commission is satisfied that the transport manager has been served with a notice —

- (a) stating that the Commission has before it allegations concerned with whether or not he is of good repute or is professionally competent (as the case may be);
- (b) stating that he is entitled to make representations under this paragraph, within 28 days beginning with the date that the notice is served on him; and
- (c) setting out the nature of the allegations against him.

(2) Where a transport manager makes representations under this paragraph, the Commission shall consider the representations in determining whether the transport manager is of good repute and is professionally competent.

(3) A notice shall be deemed for the purposes of sub-paragraph (2) to have been served on a transport manager on the date that it would have been delivered in the ordinary course of post if it was sent by post addressed to him at his last known address, notwithstanding that the notice was returned as undelivered or was for any other reason not received by him.

(4) The reference in this paragraph to a person being of good repute or professionally competent shall be construed in accordance with paragraphs 9 and 11 respectively.

21. Identification of vehicles.

(1) The Commission shall, when any vehicle to be used under a licence is specified in the licence, issue to the holder of the licence a disc in respect of the vehicle.

(2) Those discs shall distinguish between a vehicle specified in a licence which covers both international and national transport operations and one specified in a licence which covers national transport operations only.

(3) The holder of a licence shall, during such time as any vehicle is specified in the licence and whether or not for the time being the vehicle is being used for the purpose for which a licence is required, cause a disc appropriate to the vehicle to be affixed to that vehicle in a waterproof container—

- (a) in the case of a vehicle fitted with a front windscreen, on the near side and near the lower edge of the windscreen with the obverse side facing forwards;
- (b) in the case of a vehicle not fitted with a front windscreen, in a conspicuous position on the front or near side of the vehicle.

(4) At all times while a disc is affixed to a vehicle in accordance with the requirements of sub-paragraph (3) the person for the time being in control of that vehicle shall keep that disc readily legible, and at no time shall any person except the Commission, or a person authorised to do so on its behalf, write on or make any other alteration to a disc.

22. Temporary addition of a vehicle.

Where —

- (a) a vehicle specified in a licence ("the specified vehicle") has been rendered unfit for service or withdrawn from service for overhaul or repair, and the holder of the licence informs the Commission of his desire to have a variation of the licence specifying, until the specified vehicle is rendered fit for service again, a motor vehicle in his possession or to be hired without a driver ("the additional vehicle"), or
- (b) the specified vehicle has been rendered fit for service again, and the holder of the licence informs the Commission of his desire to have a variation of the licence whereby the additional vehicle will cease to be specified in the licence,

the provisions of paragraphs 3 and 4 shall not apply and the holder of the licence shall return to the Commission the disc for the specified vehicle, or the additional vehicle, as the case may be.

23. Notification of change of address.

If during the currency of a licence its holder changes his address for the service of notice as notified in his application or as subsequently notified under this paragraph he shall within 21 days from the date of such change notify such change to the Commission.

24. Production of licence for examination.

- (1) The holder of a licence shall produce the licence for inspection by —
- (a) a police officer;
 - (b) an officer of the Commission;
 - (c) a person nominated under section 46B(1)(b);
 - (d) a person appointed under section 10 of the Shop Hours Act;

on being required by such a person to do so, and the holder may do so at any operating centre covered by the licence or at his head or principal place of business, or may be required to do so at the office of the Commission or at a police station.

(2) The holder of a licence shall comply with any requirement mentioned in sub-paragraph (1) within 14 days of the day on which the requirement is made.

25. Issue of copies of licences and discs.

(1) If a licence or disc has been lost, destroyed or defaced, the person to whom it was issued shall forthwith notify in writing the Commission.

- (2) If —
- (a) the Commission is satisfied that a licence or disc has been lost, destroyed or defaced, and
 - (b) in the case of a licence or disc which has been defaced, it is surrendered to the Commission,

the Commission shall issue a copy (so marked) which shall have effect as the original licence or disc.

(3) Where a licence or disc has been lost and after a copy has been issued the lost licence or disc is found by or comes into the possession of the holder of the licence he shall forthwith return the original licence or disc to the Commission.

26. Return of licence and discs.

(1) If the holder of a licence ceases to use under the licence any vehicle specified in the licence he shall within 21 days notify the Commission and return to the Commission the licence for variation and the disc relating to the vehicle.

(2) If a licence is varied under section 73E or amended under section 73J its holder shall, when required by the Commission so to do, return to the Commission —

- (a) the licence, and
- (b) if the number of vehicles specified in the licence has been reduced, the disc relating to any vehicle no longer specified in the licence.

(3) If a licence is surrendered, suspended or revoked, or if the Commission has varied or amended the conditions to which a licence is subject, the holder of the licence shall on or before the date specified in a notice to that effect delivered to him personally or sent to him by the recorded delivery service at the address shown in his application or last notified in accordance with paragraph 23 send or deliver to the Commission —

- (a) the licence, and
- (b) the disc relating to any vehicle which the Commission may specify

for cancellation, retention during the time of suspension, or alteration as the case may be.

27. Expiry of licences.

The dates for the expiry of licences for the purposes of section 73G(1) are the last day of every month.

28. Holding companies and subsidiaries.

(1) A holding company may apply to the Commission —

- (a) if it does not already hold a licence for the grant of a licence, or
- (b) if it already holds a licence and does not desire to replace such licence with a new licence, for an amendment under section 73J to its licence,

which would have the effect, if the application were granted, of including in the licence to be issued to, or already held by, the holding company, vehicles belonging to or in the possession of a subsidiary of that company specified in the application.

(2) An application by a holding company under sub-paragraph (1) shall, unless the subsidiary is not the holder of a licence, or the licence or amendment applied for by the holding company will not take effect until any licence held by the subsidiary has expired by effluxion of time, be accompanied by an application by the subsidiary for the amendment under section 73J of the licence held by the subsidiary for the removal therefrom of all or some of the vehicles authorised to be used thereunder, being the vehicles to which the application of the holding company relates.

(3) Where a holding company, on an application under sub-paragraph (1) signifies to the Commission its desire that the provisions of this paragraph should have effect as respects a subsidiary of that company, then, in relation to the application and to any licence granted to the holding company, or held by the holding company and amended, on that application, and to the use of the vehicles authorised to be used under any such licence, sections 73A to 73L, section 76A and this Schedule shall have effect subject to the modifications specified in paragraph 29.

(4) The provisions of this paragraph shall cease to have effect as respects a holding company and its subsidiary —

- (a) if the holding company gives notice to the Commission that it desires that this paragraph should, as from any date, cease to apply to the holding company and that subsidiary, as from that date; or
- (b) as from the date on which that subsidiary ceases to be a subsidiary of that holding company.

(5) Where the provisions of this paragraph cease to have effect as respects a holding company and its subsidiary by virtue of sub-paragraph 4(b,) the company which was the holding company shall within 21 days of the event which caused the subsidiary to cease to be a subsidiary of that company notify the Commission, supply all material details of the event, and return to the Commission the licence and the discs relating to the vehicles authorised to be used thereunder, and in so far as the

holding company fails to satisfy that requirement, the company which was the subsidiary company shall on being so directed by the Commission, within 7 days of that direction supply the details, or return the licence and the discs, as the case may require.

(6) In a case where the applicant for, or the holder, of a licence is a holding company and the goods vehicles used, or to be used, under the licence belong to, or are in the possession of, a subsidiary of that holding company, the provisions of this Schedule apply as if

- (a) the road transport undertaking and any operating centre of the subsidiary were the road transport undertaking and an operating centre of the holding company,
- (b) for purposes of, or relating to, the reputation and financial standing of the holding company, the activities, relevant convictions and financial resources of the subsidiary were activities, convictions and resources of the holding company, and
- (c) in relation to a transport manager, his employment by the subsidiary were employment by the holding company.

29. Modifications in relation to holding companies and subsidiaries

(1) Sections 73A to 73K and this Schedule shall have effect in relation to licences as if any reference (except in this paragraph) to a provision which is modified by this paragraph were a reference to that provision as so modified.

(2) Sections 73A to 73K and this Schedule have effect as if —

- (a) goods vehicles belonging to, or in the possession of, the subsidiary, belonged to, or were in possession of, the holding company;
- (b) where a goods vehicle is used in circumstances in which, but for the provisions of paragraph 28 the subsidiary would be deemed to be the user, the holding company were the user;
- (c) a trade or business carried on by the subsidiary were carried on by the holding company;
- (d) the subsidiary were an applicant for the grant or variation of the licence;

- (e) any operating centre of the subsidiary were an operating centre of the holding company;
 - (f) any person who is a director of the subsidiary were a director of the holding company;
 - (g) any person who is an employee of the subsidiary were an employee of the holding company.
- (3) This Schedule shall have effect as if —
- (a) in paragraph 6 the reference to an operating centre of the applicant included a reference to an operating centre of the subsidiary;
 - (b) in paragraph 24 the reference to the holder of the licence included a reference to the subsidiary.

30. Direction as to “holder” of a road haulage operator licence.

- (1) In this paragraph, “actual holder” in relation to a licence, means the person to whom the licence was issued.
- (2) This paragraph applies in the event —
- (a) of the death or bankruptcy of the actual holder of a licence,
 - (b) in the case of a company, of the actual holder of a licence going into liquidation, or
 - (c) of the appointment of a receiver or manager of the trade or business of the actual holder of a licence.
- (3) This paragraph also applies in the event of the actual holder of a licence becoming a patient within the meaning of Part IV of the Mental Health Act.
- (4) After the happening of any of the events mentioned in sub-paragraphs (2) and (3) the Commission may direct that a person carrying on the trade or business of the actual holder of the licence is to be treated for the purposes of sections 73A to 73L and 76A and this Schedule as if he were the holder thereof for such purpose and to such extent as is specified in the direction for a period not exceeding —

- (a) if it appears to the Commission that there are special circumstances, 18 months;
- (b) in any other cases, 12 months;

from the date of the happening of the event.

(5) The powers under sub-paragraph (4) shall be exercisable in relation to a licence whether or not the person carrying on the trade or business of the actual holder of the licence satisfies the requirement of professional competence.

(6) Where a person is treated as if he were the holder of the licence by virtue of a direction under this paragraph —

- (a) any vehicle belonging to the actual holder of the licence or in his possession under an agreement for hire purchase, hire or loan, shall for the purposes of sections 73A to 73K and this Schedule be treated as if it belonged to that person, or was in the possession of that person under an agreement for hire purchase, hire or loan as the case may be, and
- (b) nothing in paragraph 18 shall oblige the Commission to revoke the licence by reason only of that person not satisfying the requirement of professional competence.

(7) A licence shall not by virtue of this paragraph continue to have effect after it would otherwise have expired by effluxion of time or ceased to continue in force by virtue of section 73G(2) (whichever is the later).

(8) Where the actual holder of a licence ("the old licence") makes an application for a new licence, nothing in this paragraph shall prevent the application being treated for the purposes of section 73G(2) as an application for a new licence in substitution for the old licence.

(9) Where a person who, by virtue of a direction given under this paragraph is treated as being the holder of a licence ("the old licence"), makes an application in his own name for a new licence in substitution for the old licence the application shall, unless the contrary intention appears from the direction, be treated for the purposes of section 73G(2) as an application by the actual holder of the old licence.

31. Offences.

(1) Any contravention of, or failure to comply with, a provision in paragraphs 21(3), 21(4), 23, 24, 25(1), 26(2), 26(3) and 38(5) is hereby declared to be an offence and subject on summary conviction to a fine at level 2 on the standard scale.

(2) A person who uses a goods vehicle under a licence, which covers carrying goods for hire or reward on national transport operations only, for carrying goods for hire or reward on international transport operations shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) The provisions of the paragraph do not apply in relation to offences committed before the date on which this Schedule comes into effect and subject to any transitional provisions in respect of the effect of this Schedule.

32. Classes of vehicle for which a road haulage operator licence is not required.

The classes of vehicle specified under sub-section (4) of section 73A as those to which sub-section (1)(a) of that section does not apply are the classes mentioned in Part I of Annex 1 to this Schedule.

33. Temporary exemption.

Notwithstanding section 73A(1)(a), before the consultations referred to in Article 2 (2) of the 1974 Council Directive are completed the Commission may, for the purpose of enabling an emergency to be dealt with or otherwise enabling a special need to be met, by notice in writing grant a temporary exemption from the requirement for a licence for the use of a vehicle, or a vehicle of any class, for hire or reward on national transport operations by a person engaged exclusively in such operations having only a minor impact on the transport market because of the nature of the goods carried or the short distance involved.

34. Fees.

The fees specified in Annex 2 shall be payable in respect of the various matters specified therein.

ANNEX 1

Paragraph 32

CLASSES OF VEHICLES FOR WHICH LICENCE IS NOT REQUIRED

PART I

1. Any tractor which is being used for one or more of the purposes specified in Part II of this Annex.
2. A dual-purpose vehicle and any trailer drawn by it.
3. A vehicle used on a road only in passing from private premises to other private premises in the immediate neighbourhood belonging (except in the case of a vehicle so used only in connection with excavation or demolition) to the same person, provided that the distance travelled on a road by any such vehicle does not exceed in the aggregate six miles in any one week.
4. A motor vehicle constructed or adapted primarily for the carriage of passengers and their effects, and any trailer drawn by it, while being so used.
5. A vehicle which is being used for funerals.
6. A vehicle which is being used for police, fire brigade or ambulance purposes.
7. A vehicle which is being used for fire-fighting or rescue operations at mines.
8. A vehicle on which no permanent body has been constructed, which is being used only for carrying burden which either is carried solely for the purpose of test or trial, or consists of articles and equipment which will form part of the completed vehicle when the body is constructed.
9. A vehicle which is being used under a dealers licence.
10. A vehicle used by or under the control of Her Majesty's United Kingdom forces or the Gibraltar Regiment.
11. A trailer not constructed primarily for the carriage of goods but which is being used incidentally for that purpose in connection with the construction, maintenance or repair of roads.
12. A road roller and any trailer drawn by it.

13. A vehicle while being used under the direction of the Port Department or the police force for the carriage of life-boats, life-saving appliances or crew.
14. A vehicle fitted with a machine, appliance, apparatus or other contrivance which is a permanent or essentially permanent fixture, provided that the only goods carried on the vehicle are —
- (a) required for use in connection with the machine, appliance, apparatus or contrivance or the running of the vehicle,
 - (b) to be mixed by the machine, appliance, apparatus or contrivance with other goods not carried on the vehicle in order to make fodder for animals, or
 - (c) mud or other matter swept up from the surface of a road by the use of the machine, appliance, apparatus or other contrivance.
15. A vehicle while being used by the Government —
- (a) for the purposes of the enactments relating to weights and measures or the sale of food and drugs; or
 - (b) road cleansing or road watering; or
 - (c) the collection or disposal of refuse, night soil or the contents of cess-pools or septic tanks.
16. A steam-propelled vehicle.
17. A tower wagon or trailer drawn thereby, provided that the only goods carried on the trailer are goods required for use in connection with the work on which the tower wagon is ordinarily used as such.
18. A vehicle while being used for the carriage of goods within the area of the air field.
19. An electrically propelled vehicle.
20. A showman's goods vehicle and any trailer drawn thereby.
21. A vehicle first used before 1 January 1977 which has an unladen weight not exceeding 1525 kilograms and for which the maximum gross weight, as shown on a plate affixed to the vehicle, exceeds 3.5 tonnes but does not exceed 3 1/2 tons.

- 22. A vehicle being held ready for use in an emergency by an undertaking for the supply of water, electricity, gas or telephone services.
- 23. A recovery vehicle.
- 24. A vehicle which is being used for snow clearing, or for the distribution of grit, salt or other materials on frosted, icebound or snow-covered roads or for going to or from the place where it is to be used for the said purposes or for any other purpose directly connected with those purposes.
- 25. A vehicle proceeding to or from the motor vehicle test centre provided that
 - (a) the only load being carried is a load required for the purposes of the examination, and
 - (b) it is being carried at the request of the Chief Examiner or the Commission.

PART II

PURPOSES REFERRED TO IN PARAGRAPH 1 OF PART I OF THIS ANNEX

- 1. Hauling —
 - (a) threshing appliances;
 - (b) farming implements;
 - (c) a living van for the accommodation of persons employed to drive the tractor; or
 - (d) supplies of water or fuel required for the tractor.
- 2. Hauling articles for a farm required by the keeper, being either the occupier of the farm or a contractor employed to do agricultural work on the farm by the occupier of the farm.
- 3. Hauling articles for a forestry estate required by the keeper where the keeper is the occupier of that estate or employed to do forestry work on the estate by the occupier or a contractor employed to do forestry work on the estate by the occupier.

4. Hauling within 15 miles of a farm or a forestry estate occupied by the keeper, agricultural or woodland produce of that farm or estate.

5. Hauling within 15 miles of a farm or a forestry estate occupied by the keeper, material to be spread on roads to deal with frost, ice or snow.

6. Hauling a snow plough or a similar contrivance for the purpose of clearing snow.

7. Hauling —

(a) soil for landscaping or similar works, or

(b) a mowing machine,

where the keeper is a local authority.

ANNEX 2

ROAD HAULAGE OPERATOR LICENCES FEES

<u>Fee</u>	<u>£</u>
1. Application for a licence	25.00
2. For the issue of a licence (including up to 2 vehicles) (for a period of 5 years, pro rata for a lesser period)	200.00
3. For additional vehicle included on an operator licence (per vehicle) (for a period of 5 years, pro rata for a lesser period)	10.00
4. For the transfer of a licence	100.00
5. For a duplicate licence	10.00
6. Application to amend a licence	10.00
7. Renewal of a licence (including up to 2 vehicles) (for a period of 5 years); pro rata for a lesser period)	100.00

8. For each additional vehicle included in a renewal for a licence (per vehicle) (for a period of 5 years; lesser periods pro rata)." 10.00

Transitional provisions.

3. Where on the coming into effect of these regulations a person is carrying on an activity to which these regulations apply it shall be sufficient compliance with these regulations if that person complies with any applicable requirement within three months of the coming into effect of these regulations.

Dated this 22nd day of June 1995.

J. C. Perez.
Minister for Government Services.

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