

GOOD REPUTE AND FITNESS

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GUIDANCE

1. The Department for Infrastructure (DFI) has issued the following guidance in relation to the requirements of good repute and or fitness.

PASSENGER CARRYING VEHICLES LEGISLATION: The Transport Act (Northern Ireland) 1967 – “the Act”

Regulation (EC) No1071/2009 – “the 2009 Regulation”

Road Passenger Transport (Qualifications of Operators) Regulations (NI) 2014

General provisions

- Section 6A of the Transport Act (Northern Ireland) 1967 (the Act) states that the Department shall refuse to grant an applicant with a bus operator licence unless it is satisfied that the applicant- has an effective and stable establishment in Northern Ireland, is of good repute, has appropriate financial standing and has the requisite professional competence. Section 10(3A) states, where at any time during the currency of a road service licence it appears to the Department that, the holder of the licence no longer satisfies the requirements of section 6A or the Transport manager designated in accordance with section 6A no longer satisfies the requirements the department shall revoke the licence.
2. Section 5 of the Act requires any applicant to provide any further information which the Department may reasonably require in relation to the application. Section 5(1) includes information of any previous experience or financial interest in providing services for the carriage of passengers for reward. Section 5(2) requires that an applicant provide particulars to satisfy the Department that the applicant has an effective and stable establishment in Northern Ireland and details of convictions, penalties or serious infringements which have occurred during the preceding five years and until the application process is complete.
 3. Section 6 of the Act states that the Department, when considering applications, shall take into account previous conduct of the applicant as a person providing facilities for the carriage of passengers for reward and the revocation or suspension of any road service licence held at any time by the applicant. This will also include any company of which the applicant is or has been a director, where the applicant is a company any person who is its director or any other company linked with that director, any member of a partnership, any parent company.

Bus Operator Licences

4. Section 6A (1) of the Act states that a licence will not be granted unless the Department is satisfied that the applicant:
 - Has an effective establishment in NI (as determined by Article 5 of the 2009 Regulation)
 - Is of good repute (as determined in accordance with section 46B)

- Has appropriate financial standing (as determined in accordance with section 46B of the Act and Article 7 of the 2009 Regulation), and
 - Is professionally competent (as determined in accordance with section 46D and Article 4 of the 2009 Regulation)
5. Section 6A (2) of the Act requires that a designated transport manager must meet the requirements of Article 4 of the 2009 Regulation including:
- Is of good repute (as determined in accordance with section 46B)
 - Is professionally competent (as determined in accordance with section 46D), and
 - In the case of a transport manager designated under Article 4.2 of the 2009 Regulation is not prohibited to act as a transport manager by the Department and is not designated to act as a transport manager for a greater number of road transport operators, or greater number of vehicles, that the Department considers appropriate as per article 4.2(c) or the 2009 Regulation, or a smaller number as per Article 4.3 of the 2009 Regulation
6. Action may be taken against a licence under section 10(1) of the Act for a failure to meet the requirements of a licence condition or any undertaking given pursuant to section 6A(3) has not been fulfilled. It is a condition for licenced operators to inform the Department within 28 days of any change to:
- the name and legal form of the undertaking;
 - the address of the establishment;
 - matters affecting good repute
 - matters affecting financial standing
 - matters affecting professional competence
 - the transport manager's good repute and/or professional competence
 - the type of authorisation, number of vehicles etc.
7. Section 6A (1)(b) of the Act states that an applicant for a licence is of good repute. Section 10 (3A) states that a licence shall be revoked if it appears to the Department that the licence holder is no longer of good repute
8. Section 46B of the Act gives the Department discretionary powers to have regard to any matter in determining whether individuals or companies are of good repute either upon application or at any time during the life of the licence but in particular must have regard to any convictions and penalties of the individual or company/directors, employees/officers, or agents.
9. Under section 46B(3) of the Act the Department must consider whether a finding that the person is no longer of good repute would constitute a disproportionate response.
10. Under section 46B(4) of the Act the Department shall determine that a person is not of good repute if that person has_
- Been convicted of a serious offence
 - Incurred a conviction or penalty for one of the most serious infringements of Community rules as set out in Annex IV of the 2009 Regulation or
 - Been convicted of, or incurred a penalty for, a road transport offence.

11. A serious criminal offence is defined in section 46B(6) of the Act as any conviction where one of the following punishments has been imposed:
 - Imprisonment exceeding three months;
 - A fine exceeding level 4 on the standard scale currently £2500
 - A community service order (or equivalent) requiring unpaid work for more than 60 hours;
 - Any punishment outside the UK corresponding to the above.
12. A road transport offence is defined in section 46B(7) as an offence under the law of any part of the United Kingdom relating to road transport including, in particular
 - An offence as listed under Article 6(1)(a)(iv) or Article 6(1)(b) of Regulation (EC) No 1071/2009, or
 - Any corresponding offence under the law of a country or territory outside the United Kingdom

Other Relevant Legislation: Convictions and infringements

The Rehabilitation of Offenders (Northern Ireland) Order 1978

13. Article 3 of the Rehabilitation of Offenders (Northern Ireland) Order 1978 provides that a person is to be treated as a rehabilitated person. A conviction is to be treated as “spent” provided that the following conditions are satisfied in relation to any offence or offences committed before or after commencement of the Order:
 - the sentence imposed is not excluded from rehabilitation under the Order;
 - since the conviction and during the relevant rehabilitation period, there has not been a subsequent conviction and sentence which is excluded from rehabilitation.
14. The convictions of corporate bodies are not subject to the Rehabilitation of Offenders (Northern Ireland) Order 1978.
15. A person can only become a rehabilitated person if the sentence has been served in full or there has been full compliance with the requirements of the sentence. A failure to pay a fine or breach of a community penalty does not exclude a person from subsequently becoming rehabilitated. A sentence of imprisonment is deemed to have been served as at the time that the order requires the offender to be released from prison.
16. Article 5 of the Order sets out the effect that rehabilitation has on an offender. A person who has become a rehabilitated person shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for, or convicted of or sentenced for the offences which were the subject of the conviction. The result is specifically limited and refers to convictions rather than the conduct itself:
 - no evidence is admissible in any proceedings before a judicial authority exercising its functions in Northern Ireland to prove that the individual has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which is the subject of the spent conviction; and

- a person shall not, in any such proceedings, be asked, and, if asked, shall not be required to answer, any question relating to his past which cannot be answered, without acknowledging or referring to a spent conviction or spent convictions or any circumstances ancillary thereto.
- 17.** For the purposes of Article 5 of the Order “proceedings before a judicial authority” include, in addition to proceedings before any of the ordinary courts of law, proceedings before any tribunal, body or person having power:
- by virtue of any statutory provision, law, custom or practice;
 - under the rules governing any association, institution, profession, occupation or employment; or
 - under any provision of an agreement providing for arbitration with respect to questions arising there under;
- to determine any question affecting the rights, privileges, obligations or liabilities of any person or to receive evidence affecting the determination of any such question.
- 18.** Article 7 sets out the rehabilitation periods as summarised in the attached instruction on Rehabilitation (page 14). Article 7 sets out the rehabilitation period applicable where multiple convictions apply:
- where only one sentence covered by this Order is imposed the rehabilitation period is as set out at Article 6.
 - where more than one sentence covered by this Order is imposed in respect of a conviction (whether or not in the same proceedings) the applicable rehabilitation period is that for the longest sentence.
 - where a person is conditionally discharged or placed on probation and after the end of the applicable rehabilitation period he is dealt with, in consequence of a breach of the order for the offence for which the order was made then he shall not be treated as having become rehabilitated until the end of the rehabilitation period for the new sentence.
 - If during the rehabilitation period the person convicted is convicted of a further offence (other than a summary offence) and no sentence excluded from rehabilitation is imposed in respect of the latter conviction any rehabilitation period which would end the earlier shall be extended so as to end at the same time as the other rehabilitation period.
 - the rehabilitation period applicable to another conviction cannot be extended by reference to an order imposing on a person any disqualification, disability, prohibition or other penalty.
- 19.** The provisions do not apply to a conviction in another country which would not have constituted an offence if it had taken place in Northern Ireland.
- 20.** Whilst Article 8(3) of the Rehabilitation of Offenders (Northern Ireland) Order 1978 allows a “spent” conviction to be admitted in evidence where the judicial authority, i.e. the Department, is satisfied, in the light of any considerations which appear to it to be relevant (including any evidence which has been or may thereafter be put before it), that justice cannot be done in the case except by admitting or requiring evidence relating to a person’s “spent” convictions, this is subject to the specific provisions relating to spent convictions in the Road Passenger Transport legislation, as above. Article 8(3) ensures that “spent” convictions stay “spent” unless it is in a class where it is permissible to do so

and the party applying to put the “spent” conviction in (for example the Police or DVA) can satisfy the Department that there is no other way of doing justice.

21. In accordance with section 46B 9(b) the Department may also disregard a conviction if such time as it thinks appropriate has elapsed since the date of the conviction.

Regulation (EC) 1071/2009

Serious infringements

22. Annex IV of the Regulation (EC) 1071/2009 identifies the most serious infringements that must be considered by the Department for the purposes of Article 6(2)(a) relating to good repute.

23. They are as follows

- Exceeding the maximum 6-day or fortnightly driving time limits by margins of 25 % or more
- Exceeding, during a daily working period, the maximum daily driving time limit by a margin of 50 % or more without taking a break or without an uninterrupted rest period of at least 4,5 hours
- Not having a tachograph and/or speed limiter, or using a fraudulent device able to modify the records of the recording equipment and/or the speed limiter or falsifying record sheets or data downloaded from the tachograph and/or the driver card
- Driving without a valid roadworthiness certificate if such a document is required under Community law and/or driving with a very serious deficiency of, inter alia, the braking system, the steering linkages, the wheels/tyres, the suspension or chassis that would create such an immediate risk to road safety that it leads to a decision to immobilise the vehicle
- Transporting dangerous goods that are prohibited for transport or transporting such goods in a prohibited or non-approved means of containment or without identifying them on the vehicle as dangerous goods, thus endangering lives or the environment to such extent that it leads to a decision to immobilise the vehicle
- Carrying passengers or goods without holding a valid driving licence or carrying by an undertaking not holding a valid Community licence
- Driving with a driver card that has been falsified, or with a card of which the driver is not the holder, or which has been obtained on the basis of false declarations and/or forged documents
- Carrying goods exceeding the maximum permissible laden mass by 20 % or more for vehicles the permissible laden weight of which exceeds 12 tonnes, and by 25 % or more for vehicles the permissible laden weight of which does not exceed 12 tonnes

24. Article 16 refers to the establishment of a National electronic register, which must contain

- i. the name and legal form of the undertaking;
- ii. the address of its establishment;
- iii. the names of the transport managers designated to meet the conditions as to good repute and professional competence, or the name of a legal representative;

- iv. the type of authorisation, the number of vehicles it covers and, where appropriate, the serial number of the Community licence and of the certified copies
- v. the number, category and type of serious infringements, as referred to in Article 6(1)(b), which have resulted in a conviction or penalty during the last 2 years;
- vi. the name of any person declared to be unfit to manage the transport activities of an undertaking, as long as the good repute of that person has not been re-established pursuant to Article 6(3), and the rehabilitation measures applicable.

Interconnectivity of the National Registers between Member States

25. Regulation (EC) 1213/2010 requires that Member States from 31st December 2012 ensure that there is inter-connectivity between the various National Registers. The Department may therefore be referred to incidents where an operator and/or transport manager has been convicted of a *serious criminal offence* or has incurred a penalty within the European Union for a serious infringement of Community rules relating to:

- the driving time and rest periods of drivers, working time and the installation and use of recording equipment;
- the maximum weights and dimensions of commercial vehicles used in international traffic;
- the initial qualification and continuous training of drivers;
- the roadworthiness of commercial vehicles, including the compulsory technical inspection of motor vehicles;
- access to the market in international road haulage or, as appropriate, access to the market in road passenger transport;
- safety in the carriage of dangerous goods by road;
- the installation and use of speed-limiting devices in certain categories of vehicle;
- driving licences;
- admission to the occupation;
- animal transport.

Case law

26. This guidance may be subject to decisions of the higher courts and to subsequent legislation. As good repute and fitness are not defined in legislation the Department has extracted the following principles and examples from existing case law which apply to both¹. Where a legal person is subject to an existing disqualification that means they cannot be involved in an application or operation²

27. Whilst European law leaves the choice of form and methods for the implementation of a Directive or Regulation to the particular Member State, European case law requires, in this instance the interpretation of 'road transport offences', to be consistent with the wording and purpose of the Regulation so as to achieve the intended result (as per the third paragraph of Article 249 of

¹ 2013/007 Redsky Wholesalers Ltd

² 2013/040 Southwaterstreet Ltd t/a S W Transport and Thomas McKinney – as a director, 2014/066 Bridget Burden & Partners – as a partner.

the EC Treaty)³. This approach is supported by domestic case law⁴. The EC legislation refers to “serious” road transport offences. It follows that the Department is not required to revoke licences for loss of good repute if operators are convicted of a number of minor road transport offences but might still take action in these cases under the existing discretionary powers in the legislation (see Article 6 at Annex 2). In the interests of consistency the Department will generally view as serious those offences which have a significant adverse impact in particular on:

- an operator’s fitness to hold a licence;
- road safety;
- the promotion of fair competition;

and the protection of the environment. The Department must now approach the question of good repute by taking into account Section 46B of the 1967 Act, but also Article 6 of Regulation 1071/2009⁵. They cannot review the merit of a criminal conviction⁶ but must also consider the relative seriousness.

28. The provisions regarding road transport offences are entirely separate from the general provisions relating to serious offences. On the previous wording of the legislation the phrase “more than one conviction” did not require proof of different incidents or different days of commission or of hearing in court. On any view a second conviction makes the breach of the law the more serious, since the additional conviction indicates a repetition of wrong-doing which properly affects the issue of general good repute⁷. The Department will consider each conviction separately to determine its seriousness, e.g. adherence to the rules relating to drivers’ hours are fundamental to road safety⁸. However the case law importing a test of seriousness to road transport offences predates both the decision in *Crompton t/a david Crompton Haulage v Secretary of State for Transport* (2003) EWCA Civ 64 and 2002/217 *Bryan Haulage Ltd*, which in any event must now be read in the context of the directly applicable provisions of regulation (EC) 1071/2009.

29. The Department should be careful to distinguish between the position of a company and individuals such as directors due to the provisions relating to mandatory loss of repute. Convictions of a company’s officers, servants or agents, however, may be relevant. The minimum repute requirement will not be satisfied if relevant individuals have been convicted of serious criminal offences. That minimum requirement of good repute cannot be reduced by reference to “proportionality”⁹.

30. The Upper Tribunal has highlighted the differences between an application where the Department exercises a ‘gatekeeper function’ and any subsequent regulatory action taken after a licence has been granted.¹⁰ On application the Department will wish to determine who will be responsible for fulfilling the undertakings and conditions and whether they are fit to do so¹¹. Clearly an

³ Case C-106/89 *Marleasing* [1990] ECR I-4135 and Case C-334/92 *Wagner Miret* [1993] ECR I-6911

⁴ *Litster v. Forth Dry Dock and Engineering Company Ltd* (1990) 1 AC 546, and *Pickstone v Freemans plc* (1989) AC 66 and *Clyde v Eagle Star Insurance Co* (1988) 4 All ER 417

⁵ 2012/034 *martin Joseph Formby t/a G&G Transport*

⁶ *Nottingham City Council v Farooq (mohammed)* (1988) *The Times* 28th October

⁷ 2000/009 & 2000/010 *J C Stephenson & T E Turner (trading as J & T Transport) and Thomas McHugh*

⁸ 2001/074 *B E Clark*

⁹ 2008/580 *TS Dhaliwal*, See Practice Guidance and Instructions on the Principles of Decision Making

¹⁰ 2013/046 *Shearer Transport Ltd & James Shearer*

¹¹ 2013/019 *Susan tattersall t/a TMS*

application form cannot envisage every situation, for instance where serious convictions are not necessarily notifiable¹² or where convictions are not specifically referred to in the schedules. The department cannot be expected to overlook facts which might be relevant to future compliance¹³ The undertakings specified on the licence, however, include a commitment to report convictions recorded against the licence holder or employees or agents of the licence holder.

31. An applicant or operator can be taken to be aware of the various guidance documents issued by the Department¹⁴ The legislation gives the department wide discretion so that they 'may have regard to any matter' in determining whether an applicant is of good repute and can take into account any other information which appears to them to relate to the fitness of the individual to hold a licence. The wording of the general conditions on Bus Operators Licences explicitly imposes a duty to inform the Department of any events affecting good repute including convictions.
32. The Department is not limited to the circumstances of a particular offence but can and will look at the conduct involved¹⁵. It can and will, for instance, consider general conduct where the operator was well aware of the commercial advantages that he was obtaining by reason of operating outside the operator licensing system and was not operating on a level playing field with his competitors¹⁶ such as fraud and breach of contract¹⁷. This might therefore include anti-competitive behaviour or a failure to deliver against registered timetables. The Department may examine matters where there is no conviction e.g. relevant charges left on the Crown Court file or a Police report of a relevant offence. The Department is entitled 'to take into account all reports concerning speeding or overloading when considering an operator's fitness to hold a licence'¹⁸. Other conduct such as a lack of co-operation and/or honesty during the course of the public inquiry will also be relevant. It is incumbent of course on an operator to ensure that prohibitions are cleared before using a relevant vehicle¹⁹.
33. 'Fronting', where a person, partnership or company, which does not have an operator's licence, uses the operator's licence held by another entity to conceal the fact that they are behaving in a way which requires them to have an operator's licence of their own, is considered to be serious. Fronting deprives the Department of the opportunity to oversee an 'operator'. 'Fronting' is aggravated and very much more serious where it is apparent that the entity hiding behind the legitimate 'front' would be unlikely to obtain or would be debarred from holding their own operator's licence. The Upper Tribunal has given clear guidance that evidence of fronting can, on its own, provide justification for deciding that the operator being used as a 'front' has lost its good repute²⁰.

¹² 2001/044 N hazel trading as JRS Freight (sentence of 46 months imprisonment for wounding with intent)

¹³ 2009/528 KHJ Ltd once trust breaks down it is very difficult to rebuild – Upper Tribunal stay decision in Jarson Ltd t/a Rob Jones Tractor Hire the Upper Tribunal.

¹⁴ 2012/346 MGM Haulage & Recycling Ltd

¹⁵ 2010/367 Aspey Trucks Ltd considering the circumstances surrounding a conspiracy to supply Class B drugs

¹⁶ 2006/73 AG Everett

¹⁷ 2010/058 Asif Mohammed Din t/a Ribble Valley Private Hire – unauthorised sub-contracting and use of drivers with no CRB checks for taxi work

¹⁸ 2001/010 T Smith

¹⁹ 2006/487 J & CM Smith

²⁰ 2011/357 Utopia Traction Ltd

34. It is clear from the case law that the loan of discs is a serious matter²¹ as is the use of out of date discs²². It is incumbent on an operator who displays a disc from another operator to provide a paper trail to show that the use is legitimate²³. If an operator is found to have deliberately not paid vehicle excise duty it is open to conclude that there has been tax evasion²⁴, as with the persistent use of untaxed vehicles²⁵. The avoidance of fuel excise duty through the unlawful use of untaxed fuel 'undermines fair competition and no responsible regulator can tolerate it'²⁶ (and HMRC may also impose penalties)²⁷. In such circumstances the Department will give very serious consideration as to whether operators can continue to satisfy the repute requirement.
35. Adherence to the rules relating to drivers' hours is fundamental to road safety. The responsibility for ascertaining what is required and for complying with those requirements lies with the operator²⁸. Compliance has been described in three simple steps: check compliance with the governing legislation, train drivers regarding that legislation and monitor compliance, retrain and discipline drivers where shortcomings are identified. Whilst the task of ensuring compliance with those requirements can be delegated the responsibility cannot²⁹. The Department can and will exercise its discretion in individual cases and therefore is entitled to conclude that convictions for this type of breach are serious road transport offences which could then lead to a loss of repute³⁰. In cases of persistent breaches of the drivers' hours rules and tachograph regulations by drivers the Department will scrutinise the operator's arrangements for ensuring compliance expecting detailed evidence of those arrangements to be provided (rather than mere assertions being made). Where the Department finds that the operator had knowledge of the breaches it will give serious consideration as to whether the operator can continue to satisfy the repute requirement as the operator should have been complying with the relevant undertaking. Missing mileage and a failure to retain or keep full records can often result in the remaining records being false as they may not show the true position. In cases of persistent breaches it may be difficult for an operator to contend that he has complied with his undertaking, as it requires a more rigorous regime³¹.
36. A licence is issued to an operator on trust that the operator will comply with the requirements and that the application form has been fully and honestly completed. A failure to appoint a replacement transport manager after a period of grace or to communicate with the Department can amount to serious conduct on the part of the operator.³² A persistent failure to comply with undertakings, especially following a warning, may provide *compelling* reasons³³ to conclude that there has been a loss of repute/fitness. The Department is entitled to have regard to first time annual test failures because they can be a barometer of the

²¹ 2000/15 D Murphy, 2010/84 & 86 Coach Express Ltd & Others

²² 2000/027 P Brown trading as Leroy Coaches

²³ 2010/084&86 Coach Express Ltd & Others

²⁴ 2000/066 D Eccles

²⁵ 2001/007 Alkaline UK (following a withdrawal of funds by an associated company)

²⁶ NT/2014/019 OC International Ltd v DOENI

²⁷ 2002/018 UK Plant & Haulage (Services)

²⁸ 2010/063 Cornelius Pryde Hart and Abigail Hart t/a Zulu's Minibus

²⁹ *Harding v VOSA* (2010) EWHC 713 Admin establishes that where a driver does not take the required rest period and has not kept a record of his reasons cannot rely on the exemption which allows derogation for safety reasons.

³⁰ 2001/074 Brian Edward Clark

³¹ 2001/007 Alkaline UK

³² 2012/001 Zeeshan Malik t/a Langston's Group

³³ 2011/036 LWB Ltd

way in which the vehicle in question is being maintained.³⁴ Where the Department finds that trust has been abused it may lead to a loss of repute, for example where there has been a failure to notify changes³⁵. The honest and truthful completion of an application for a licence is fundamental to the operator licensing system. The Department is entitled to conclude that an application form should have been checked by the applicant, a company secretary or by the directors/officers of the company³⁶ and that the vehicles will be operated by the person who has applied for the licence³⁷. Clearly the provision of false bank statements³⁸ or the failure to disclose relevant previous conduct such as convictions³⁹ or revocations⁴⁰ or insolvency⁴¹ will entitle the Department to question the operator's repute and is likely to have a serious impact upon that repute.

- 37.** A history of involvement with dissolved companies without any evidence of actual wrongdoing will not of itself amount to a loss of repute⁴². Where an individual has declared a previous bankruptcy but produced a discharge certificate and satisfactory financial evidence, in the absence of any other issue this should not of its own prevent grant. However, the use of "Phoenix" arrangements to avoid previous liabilities may amount to unacceptable business practice⁴³. A phoenix company is where the assets of one limited company are moved to another legal entity (sometimes referred to as a 'pre-pack') but with no obligation to pay the failed company's debts. Commissioners will scrutinise such applications carefully to ensure the promotion of the principle of fair competition.
- 38.** Dishonesty and illegal operation are very serious matters. The Department is entitled to conclude that a person does not have the required repute where they have decided to operate without authorisation particularly in the face of warnings not to⁴⁴. All operators have a positive duty to co-operate with DVA and the Department. Any attempt to deceive the Department is serious conduct that cannot be condoned particularly where an operator and/or applicant relies on a document that has been altered so that it might mislead the Department⁴⁵. Similarly operators who deliberately deceive and present false evidence to the Department either in correspondence or at public inquiry are also liable to prosecution through the criminal courts and are likely in serious cases to receive a custodial sentence.
- 39.** Other conduct such as a failure to heed instructions from enforcement or police officers⁴⁶ or attempts to circumvent the licensing system⁴⁷ recurring civil penalties and breaches of other enforcement regimes such as the Home Office code of practice on preventing clandestine entrants⁴⁸ will also have a serious

³⁴ 2012/023 JA & VC Fryer farms

³⁵ 2000/36 C Clark, 2008/410 Brian Hill Waste Management (prior to administration)

³⁶ 2000/041 Hi-Kube

³⁷ 2004/426 EA Scaffolding, 2004/255 M Oliver,

³⁸ 2006/313 D Lloyd

³⁹ 2000/059 Dolan Tipper Services

⁴⁰ 2004/367 N & S Gillman

⁴¹ 2007/212 Huxley Travel

⁴² 2010/067 Pemberton Transport Ltd

⁴³ 2010/083 Paul Frederick Boomer t/a Carousel and see Guidance and Instructions on Legal Entities

⁴⁴ 2005/537 West Mix, 2002/027 D Broadie

⁴⁵ 2002/009 Gollop, 2005/087 P Duckmanton (maintenance records), 2002/075 Hazco Environmental Services (Drivers' hours)

⁴⁶ 2005/050 Rush Travel

⁴⁷ 2006/056 Paul Oven Transport, AG Everett (as above),

⁴⁸ Issued pursuant to the Immigration and asylum Act 1999

impact on repute. In such circumstances the Department might be prompted to attach further conditions at grant or to seek undertakings to ensure compliance with those codes⁴⁹

40. Subject to the restrictions in the Road Passenger Transport legislation referred to above any reference to “a conviction” is not the same as a court hearing resulting in a finding of guilt, for instance a conditional discharge is not strictly a conviction⁵⁰ (see above). The same will apply to other alternative court disposals including an absolute discharge. A discharge from a court will NOT be a disposal that renders a licence liable to automatic revocation but authorities are entitled to ask questions. The application of the Rehabilitation of Offenders (Northern Ireland) Order 1978 can prove difficult when the Department is considering multiple offences and it is important to differentiate between summary only offences and offences which can or must be dealt with by the higher courts⁵¹.
41. Useful parallels can be drawn from other licensing regimes⁵² when determining the relevance of previous convictions to proceedings before the Department and the principles set out below are useful when deciding whether or not to consider spent convictions:
 - where a judicial authority is considering whether justice cannot be done in a particular case except by admitting evidence of spent convictions, it would be contrary to the purpose of the legislation to receive all spent convictions and then decide which ones to take into account;
 - when asked to provide information an enforcing authority should identify the issue to which the spent convictions would relate if they were admitted and then should not only limit disclosure to those convictions which are relevant but should also provide a covering note indicating in general terms the class, age and seriousness of each of those offences in order to help the licensing authority to decide whether, once it has heard the applicant on the matter, it wishes to be informed of the details of the spent convictions so that it may treat them as material convictions;
 - any advocate should indicate in general terms the class, age and seriousness of the offences in order to help a tribunal decide whether, once it has heard the applicant on the matter, it wishes to admit evidence of the convictions;
 - it may be that only some of the spent convictions should be received and the applicant should be given an opportunity to persuade the tribunal that any spent convictions which have been disclosed are either irrelevant or should not prejudice the application because of their age, circumstances or lack of seriousness;
 - the tribunal should come to its own dispassionate conclusion having regard to the interests of both the applicant and the public in whose interests the exceptional power to have regard to spent convictions is being exercised.
42. Consequently the Upper Tribunal has commented that, in light of the statutory restrictions referred to above, it would be slow to accept that there are any circumstances in which a GB traffic commissioner may refer to spent

⁴⁹ For instance failure to comply with EU Regulation 181/2011 on bus and coach passenger rights

⁵⁰ R v Rupal Patel No 2006/4890/B5

⁵¹ 2009/530 Boomerang Travel Ltd

⁵² Adamson v Waveney District Council [1997] 2 All ER 898, where the court was concerned with the grant of hackney carriage licence to ‘a fit and proper person’.

convictions when considering loss of reput⁵³. This position would also apply to the Department

INSTRUCTIONS

43. The Department issues the following Instructions. The aforementioned Guidance relates to matters which may affect repute and fitness. These instructions are issued in respect of the approach to be taken by staff acting on behalf of the Department and dictate the operation of delegated functions.

Basis of Instructions

44. These instructions are issued to provide practical advice on the administrative arrangements to those who support the Department in fulfilling its statutory functions.
45. The difficulty in providing instructions stems from the absence of a definition for 'good repute' or 'fitness' within the legislation. The Guidance above cannot provide a definitive list of all conduct which might impact on repute or fitness. Therefore the Department must also decide when to exercise its discretion. The purpose of these instructions is to provide as much clarification as is possible and, they should be read in conjunction with the attached Guidance which offers useful examples by way of illustration. The attached Annex 1 summarises those examples. It sets out the starting point for submissions but the Department can and might call for more information.

Submissions

46. When processing an application if staff members find some adverse history, they will need to gather all the relevant facts surrounding the case and present it to Senior Officials so that they can decide on the appropriate action. When compiling a submission members of staff should:
- Gather ALL relevant information.
 - Provide facts, distinguishing information from evidence and quote dates and licence number(s) if applicable, be precise and to the point.
 - Provide a recommendation which is fully supported by the relevant legislation.
47. Members of staff should refer to the Guidance for examples of conduct which might impact on an operator/applicant's repute. In general the Department will be assisted by any information relating to the following conduct:
- Convictions – taking account of the different application to individuals; is it a serious offence and/or a road transport offence?
 - Previous revoked/curtailed or suspended licences;
 - Previous adverse history including warnings and/or public inquiry ;
 - Prohibitions;
 - Fixed Penalty Notices;
 - Bankruptcy, sequestration or liquidation cases;
 - Avoidance of debts (phoenix applications);
 - Late payments and non payment of court orders, fines and or fixed penalty notices
 - Inability to contact operator;
 - Abusive behaviour towards enforcement officers and/or members of the Department staff

- Failure to notify material and relevant changes;
- Failure by transport managers to exercise continuous and effective responsibility;
- Unauthorised use of a place as an operating centre;
- Failure to fulfill a licence undertaking
- The operator is no longer professionally competent or able to show the availability of sufficient finance

General changes which must be notified:

Conviction of operator	within 28 days
Conviction of employee	within 28 days
Bankruptcy of operator/partner/Director	within 28 days
Liquidation/administration/receivership/company voluntary arrangement (CVA)	before order/appointment is made
Change in name or legal form of undertaking	within 28 days
Death of operator/partner	as soon as possible
Change in operating centre	Application required as no authority until grant
Change in address of establishment	within 28 days
Change of director	as soon as possible
Change of partner	as soon as possible
Change in transport manager	within 28 days
Change in maintenance contractor/arrangements	as soon as possible
Removal of vehicle/trailer	within 1 month
Addition of vehicle/trailer	within 1 month if within the margin otherwise application required as no authority until grant

Where there is no specific timetable the Department considers that it would be reasonable to expect such changes to be notified within 28 days.

Rehabilitation

- 48.** Staff are specifically referred to the Rehabilitation of Offenders (Northern Ireland) Order 1978 as it applies to proceedings before the Department and the principles which can be drawn from the available case law. Spent convictions should not generally be referred to or taken into account in respect of an operator appearing before a public inquiry but the conduct itself might be relevant (see below). Care must be taken when recording and retaining the details of the spent convictions to ensure that when staff become aware that they are in possession of information about spent convictions that only senior members of the Department have access to those spent convictions.
- 49.** Ultimately the Department retains a discretion to allow convictions and/or conduct to be considered, but must take into account the evidence and circumstances of the case, balancing that conduct against other relevant material such as the operator's record. They also have discretion to disregard other convictions, which are not spent, applying the principle of proportionality. The relevant rehabilitation periods are set out below after which different offences are said to be "spent".

- 50.** The Legal Aid, Sentencing and Punishment of Offenders Act 2012 amends the rehabilitation period as follows:

Where on a conviction the sentence (or equivalent) imposed is:	The rehabilitation period begins on conviction and lasts for	
	Adult	Offenders under 18
A custodial sentence of more than 30 months up to and consisting of 48 months	The end of the period of 7 years beginning with the day on which the sentence (including any licence period) is completed. Sentences above 48 months are excluded from rehabilitation	Up to 48 months – the end of the period of 42 months beginning with the day on which the sentence (including any licence period) is completed
A custodial sentence more than 6 months and up to or consisting of 30 months	The end of the period of 48 months beginning with the day on which the sentence (including any licence period) is completed.	The end of the period of 24 months beginning with the day on which the sentence (including any licence period) is completed
A custodial sentence of 6 months or less	The end of the period of 24 months beginning with the day on which the sentence (including any licence period) is completed	The end of the period of 18 months beginning with the day on which the sentence (including any licence period) is completed
Community or youth rehabilitation order	The end of 12 months beginning with the day provided for by or under the order as the last day on which the order is to have effect.	The end of 6 months beginning with the day provided for by or under the order as the last day on which the order is to have effect.
A fine	The end of 12 months beginning with the date of the relevant conviction	The end of 6 months beginning with the date of the relevant conviction.
Compensation Order	The date on which the payment is made in full.	
A relevant order (e.g. Conditional Discharge, Bind over to keep the peace, Hospital Order, Supervision or Care Order, Disqualification, disability prohibition or other penalty – this list is not exhaustive)	The day provided for by or under the order as the last day on which the order is to have effect.	

- 51.** The convictions of corporate bodies are not subject to the Rehabilitation of Offenders (Northern Ireland) Order 1978. Since Article 5 of the Rehabilitation of Offenders (Northern Ireland) Order 1978 states that a person who has become a rehabilitated person shall be treated for all purposes in law as though there has been no conviction against that person, no evidence is admissible in any proceedings to prove that conviction where it is “spent” and an individual cannot be questioned in any proceedings if the questions cannot be answered without

referring to a “spent” conviction. This provision relates to proceedings before any judicial authority including a Tribunal, and as a result, includes proceedings before the Department. The Department should therefore satisfy itself as to whether:

- the sentence imposed is/is not excluded from rehabilitation under the Order;
- since the conviction and during the relevant rehabilitation period, there has not been a subsequent conviction and sentence which is excluded from rehabilitation.
- the sentence served in full. (A sentence of imprisonment is deemed to have been served as at the time that the Order requires the offender to be released from prison.)

Ultimately the Department retains a discretion to allow convictions and/or conduct to be considered, but must take into account the evidence and circumstances of the case, balancing that conduct against other relevant material such as the operator’s record. A traffic commissioner also has discretion to disregard other convictions, which are not spent, applying the principle of proportionality.

52. Whilst in relation to repute a “spent” conviction shall be disregarded in so far as the actual recorded conviction is concerned, the Senior Officials can have regard to any other information which appears to relate to the individual’s fitness to hold a licence (for example, a course of conduct which may be revealed by convictions for similar offences over a period of time, which demonstrates propensity). As a result, whether or not a “spent” conviction should be raised with an operator must be referred to Senior Officials.
53. The final decision as to whether or not it may be relevant to the proceedings before the Department and should, therefore be admitted notwithstanding that it is “spent”, is a matter for consideration only by the Senior Officials. They will need to be satisfied that there is no other way of doing justice in the case other than taking account of the spent conviction. Accordingly, in such cases, staff must refer issues concerning the admissibility of spent convictions to the Senior Officials for a preliminary ruling as to whether they should be taken into account. Each case will be considered on its own individual merits.

Most Serious Infringements

54. As stated above at paragraph 24, Regulation (EC) 1213/2010 requires that Member States ensure that there is inter-connectivity between the various National Registers. The Department may be referred to incidents where an operator and/or transport manager has been convicted of a *serious criminal offence* or has incurred a penalty within the European Union for a serious infringement of Community rules. Where this occurs, it must be considered by the Department for the purposes of Article 6(2)(a) of EC 1071/2009 and a determination of the loss of repute must be made unless the Department considers that, in the particular circumstances, such a determination would be disproportionate..

Endorsements

55. Where an endorsable offence has been committed, correspondence should refer to endorsements rather than convictions. Details of some driving offences

may remain on a driving licence for longer than the 4 years which staff members normally deal with, for instance an endorsement for a drink or drugs related road traffic offence remains on a driving licence for 11 years. Another example might be where a court imposes a fine for travelling at excessive speed and endorses a licence. If it was committed, say 8 years ago, it would be more than 5 years old and the driver would be treated as rehabilitated. If, however, there was another similar offence 4 years earlier, both offences would strictly be disclosable under the provisions of the Rehabilitation of Offenders (Northern Ireland) Order 1978.

- 56.** Current DVLA/DVA practice is to hold endorsements for between 4 or 11 years depending on the offence, in line with Article 50 of the Road Traffic Offenders (Northern Ireland) Order 1996. It follows that information about disclosable endorsements which might be put before the criminal courts for the purposes of sentencing following similar offences may not be brought to the attention of the Department.

Driver Certificate of Professional Competence (CPC)

Vocational bus and coach drivers have been required to hold a Driver's Certificate of Professional Competence since 10 September 2008. Those who already held a licence at those dates were exempt until 10 September 2013. The Vehicles Drivers (Certificates of Professional Competence) Regulations 2007 allow some specific exemptions but they only apply in particular circumstances. Where a driver is found to be driving and does not comply with the regulations then the Department will require an explanation from the operator as well as the driver, and as appropriate, the transport manager about the steps taken to ensure that drivers of authorised vehicles have the necessary qualification. Failure by the operator to take the appropriate steps can result in regulatory action being taken against the operator.

Previous decisions

- 57.** Care needs to be taken before any weight is attached to a matter that may be regarded as stale where there is an inherent objective to achieve fairness. Sometimes the letter of the Act allows consideration of a conviction, but the spirit of the legislation suggests otherwise. As a general guideline, where the operator has appeared before the Department ⁵⁴ at a previous hearing or hearings, it is both fair and proper that previous decisions from earlier hearings are made available provided of course that the principles of the legislation are adhered to.

Attempts to Avoid Liabilities

- 58.** Not all legitimate businesses succeed at the first attempt. Companies can fail for any number of reasons and there are times when directors find their company can no longer trade. There is no legal prohibition to forming a new company from the remnants of a failed business. A phoenix company is where the assets of one limited company are moved to another legal entity (sometimes referred to as a 'pre-pack'⁵⁵) but with no obligation to pay the failed company's debts⁵⁶. Often some or all of the directors remain the same. A

⁵⁴ See Practice Guidance on Delegations for the impact and limitations of delegated powers

⁵⁵ See Practice Guidance and Instructions on Legal Entities

⁵⁶ See separate guidance on legal entities

director of a failed company can become a director of a new company unless he or she:

- is subject to a disqualification order or undertaking, or
- is personally adjudged bankrupt, or
- is subject to a bankruptcy restrictions order or undertaking.

- 59.** These arrangements can allow a business to start again with the profitable elements of the failed business and are likely to seek to operate in the same sphere as its predecessor. In some cases, the new company has the same or a similar name to the failed business.
- 60.** Some unscrupulous individuals seek to avoid responsibility for their liabilities by putting their companies into insolvency or use a Company Voluntary Arrangement (CVA) or Individual Voluntary Arrangement (IVA) to continue to trade whilst insolvent.. Once a company enters insolvency or liquidation proceedings, the creditors will only be paid in order of priority from whatever remaining company funds are still available. (Trade creditors often receive only a portion of the money owed, which can impact on their ability to trade.) The directors may therefore seek to transfer the assets of a failing company for below their market value before insolvency and reduce the funds available to creditors when the original company is declared insolvent. These tactics may result in an unfair competitive advantage over the other operators.
- 61.** Whilst the Insolvency Act 1986 has made it more difficult for directors to do this by introducing stricter rules over the insolvency process and requiring liquidators to obtain the best price for a business and its assets there are still a number of unscrupulous individuals who still seek to avoid their legal responsibilities. Staff are reminded that it is an offence for a director of a company, which has gone into insolvent liquidation, to be a director of a company with the same or a similar name, or concerned in its management, without the leave of a court etc. The liquidator can also take action to recover funds where the failed company has entered into a sale at a lower than market value at a time when the company was unable to pay its debts.
- 62.** A phoenix company may be a legitimate business but the Department will wish to satisfy themselves as to any application which has the characteristics of a phoenix application. Save in exceptional circumstances the directors of a company that goes into administration will have been aware that it was in financial difficulty for a sufficient period of time to enable them to inform the Department of the material change in the company's financial position prior to administration⁵⁷. A failure to inform the Department of a material change in those circumstances may lead to adverse conclusions being drawn against the fitness of those directors. Once an Administrator is appointed s/he must decide whether or not to carry on the road passenger transport business of the company. If s/he decides not to do so s/he should take immediate steps to surrender the licence
- 63.** Members of staff acting on behalf of the Department should scrutinise any application carefully to find out why the previous company failed and to ensure that directors are not serial abusers of the phoenix company arrangements. They might for instance search the information available from Companies

⁵⁷ See Guidance and Instructions on Legal Entities

House and/or seek to obtain a status report from a credit ratings agency. The official receiver or insolvency practitioner has a duty to investigate the affairs of companies in compulsory liquidation and to report evidence of criminal offences to a prosecuting agency. Staff should attempt to obtain a copy of the relevant report and must refer it to Senior Officials where they have concerns about the application.

Transport Manager Declarations

64. In October 2011 transport managers were requested to complete and return a questionnaire in order to populate the national register. Some operators used this opportunity to change the transport manager details without making an application as they were required to do. The questionnaire specifically required the individual transport manager to only list those licences for which they had been authorised. Staff should be alive to this risk when making checks against the records. To rely on an acquired rights certificate the individual needs to have continuously managed a transport undertaking for the period of 10 years before December 2009. If there has been a false declaration this will need to be referred to the Department to consider whether or not to take regulatory action in respect of the named CPC holder and/or the operator.

ANNEX 1: STARTING POINT FOR INVESTIGATION OF REPUTE

Examples of conduct which might be relevant (not an exhaustive list)	
<ul style="list-style-type: none"> • Abusive behaviour towards DVA, DVSA or police enforcement officers and/or members of the Department staff and/ or members of DVSA's Central Licensing Office • Deliberate attempts to circumvent the operator licensing system • Inability of DVA and/or other enforcement officers to contact the operator 	
<ul style="list-style-type: none"> • Production of false documents to DVA or any enforcement agency or the Department • Loan of operator licence and/or licence discs • Use of out of date or forged operator licence and/or discs • Previous or current unauthorised operation or operation in excess of current authority 	
<ul style="list-style-type: none"> • Previous revocation, suspension or curtailment of licence within the last 5 years • Previous warnings by the Department within the last 5 years • Failure to comply with a civil penalty within the last 5 years • Tax evasion of any kind including non-payment of or avoidance of VED, fuel, tax and HMRC payments re employee tax and NI contributions within the last 5 years. 	
Bankruptcy, sequestration, administration or liquidation cases within the last 3 years	
Unfair commercial advantage	
Failure to declare relevant previous conduct	
Failure by transport managers to exercise continuous and effective responsibility	
Changes, failure to notify of	Conviction of operator
	Conviction of employee (see paragraph 8)
	Bankruptcy of operator/partner/director within the last 3 years
	Liquidation/administration/receivership within the last 3 years
	Death of operator/partner
	Change of licence type
	Change in operating Centre
	Change of director
	Change of partner
	Change in transport manager
	Change in legal form
	Change in maintenance contractor/arrangements
Convictions (notifiable)	Article 60 of the Road Traffic (Northern Ireland) Order 1981 (PSV Licence). An offence in relation to a passenger carrying vehicle

	<p>relating to the maintenance of vehicles in a fit and serviceable condition, or overloading, or the licensing of drivers.</p> <p>A drivers' hours offence.</p> <p>Article 174 of the Road Traffic (Northern Ireland) Order 1981 (false statements in connection with the forgery of, and fraudulent use of documents in relation to international permit.</p> <p>An offence under the Transport Act (NI) 1967 or the Road Traffic Order (NI) 1981 relating to licences or means of identification.</p> <p>An offence relating to section 13 of the Hydrocarbon Oil Duties Act 1979 (unlawful use of rebated fuel oil in relation to goods vehicles)</p>
<p>Convictions (other offences)</p>	<p>Individual: Is there more than one conviction for a serious offence or has the individual been convicted of road transport offences?</p> <p>Road transport offence in UK or corresponding offence outside the UK</p> <p>Serious offence – where one of the following punishments has been imposed:</p> <p>Imprisonment exceeding three months;</p> <p>A fine exceeding level 4 on the standard scale;</p> <p>A community service order (or equivalent) requiring unpaid work for more than 60 hours;</p> <p>Any punishment outside the UK corresponding to the above.</p>
	<ul style="list-style-type: none"> • Drivers hours and tachograph offences, convictions or fixed penalty notices within the last 5 years • Prohibitions and/or use of vehicles whilst still under prohibition within the last 5 years • Overloading offences or prohibitions within the last 5 years • Use of a vehicle/s whilst uninsured or tested (MSI) within the last 5 years

ANNEX 2: EU LEGISLATION

Regulation 3 of the Road Passenger Transport (Qualifications of Operators) Regulations (Northern Ireland) 2013 states that a road service licence constitutes an authorisation to pursue in the occupation of road transport operator for the purposes of:

Regulation (EC) 1071/2009 establishing common rules concerning conditions to be complied with to pursue the occupation of road transport operator repealed Council Directive 96/26 EC and applicable from 4th December 2011

Article 3 - Requirements for engagement in the occupation of road transport operator

1. Undertakings engaged in the occupation of road transport operator shall:

(b) be of good repute;

(d) have the requisite professional competence; and

2. Member States may decide to impose additional requirements, which shall be proportionate and non-discriminatory, to be satisfied by undertakings in order to engage in the occupation of road transport operator.

Article 6 - Conditions relating to the requirement of good repute

1. Subject to paragraph 2 of this Article, Member States shall determine the conditions to be met by undertakings and transport managers in order to satisfy the requirement of good repute laid down in Article 3(1)(b).

In determining whether an undertaking has satisfied that requirement, Member States shall consider the conduct of the undertaking, its transport managers and any other relevant person as may be determined by the Member State. Any reference in this Article to convictions, penalties or infringements shall include convictions, penalties or infringements of the undertaking itself, its transport managers and any other relevant person as may be determined by the Member State.

The conditions referred to in the first subparagraph shall include at least the following:

(a) that there be no compelling grounds for doubting the good repute of the transport manager or the transport undertaking, such as convictions or penalties for any serious infringement of national rules in force in the fields of:

- (i) commercial law;
- (ii) insolvency law;
- (iii) pay and employment conditions in the profession;
- (iv) road traffic;
- (v) professional liability;
- (vi) trafficking in human beings or drugs; and

(b) that the transport manager or the transport undertakings have not in one or more Member States been convicted of a serious criminal offence or incurred a penalty for a serious infringement of Community rules relating in particular to:

- (i) the driving time and rest periods of drivers, working time and the installation and use of recording equipment;
- (ii) the maximum weights and dimensions of commercial vehicles used in international traffic;
- (iii) the initial qualification and continuous training of drivers;
- (iv) the roadworthiness of commercial vehicles, including the compulsory technical inspection of motor vehicles;
- (v) access to the market in international road haulage or, as appropriate, access to the market in road passenger transport;
- (vi) safety in the carriage of dangerous goods by road;
- (vii) the installation and use of speed-limiting devices in certain categories of vehicle;
- (viii) driving licences;
- (ix) admission to the occupation;
- (x) animal transport.

2. For the purposes of point (b) of the third subparagraph of paragraph 1:

(a) where the transport manager or the transport undertaking has in one or more Member States been convicted of a serious criminal offence or incurred a penalty for one of the most serious infringements of Community rules as set out in Annex IV, the competent authority of the Member State of establishment shall carry out in an appropriate and timely manner a duly completed administrative procedure, which shall include, if appropriate, a check at the premises of the undertaking concerned.

The procedure shall determine whether, due to specific circumstances, the loss of good repute would constitute a disproportionate response in the individual case. Any such finding shall be duly reasoned and justified.

If the competent authority finds that the loss of good repute would constitute a disproportionate response, it may decide that good repute is unaffected. In such case, the reasons shall be recorded in the national register. The number of such decisions shall be indicated in the report referred to in Article 26(1).

If the competent authority does not find that the loss of good repute would constitute a disproportionate response, the conviction or penalty shall lead to the loss of good repute;

(b) the Commission shall draw up a list of categories, types and degrees of seriousness of serious infringements of Community rules which, in addition to those set out in Annex IV, may lead to the loss of good repute. Member States shall take into account information on those infringements, including information received from other Member States, when setting the priorities for checks pursuant to Article 12(1).

Those measures, designed to amend non-essential elements of this Regulation by supplementing it and which relate to this list, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).

To this end, the Commission shall:

(i) lay down the categories and types of infringement which are most frequently encountered;

(ii) define the degree of seriousness of infringements according to their potential to create a risk of fatalities or serious injuries; and

(iii) provide the frequency of occurrence beyond which repeated infringements shall be regarded as more serious, by taking into account the number of drivers used for the transport activities managed by the transport manager.

EU ANNEX IV

Most serious infringements for the purposes of Article 6(2)(a)

1. (a) Exceeding the maximum 6-day or fortnightly driving time limits by margins of 25% or more.

(b) Exceeding, during a daily working period, the maximum daily driving time limit by a margin of 50% or more without taking a break or without an uninterrupted rest period of at least 4.5 hours.
2. Not having a tachograph and/or speed limiter, or using a fraudulent device able to modify the records of the recording equipment and/or the speed limiter or falsifying record sheets or data downloaded from the tachograph and/or the driver card.
3. Driving without a valid roadworthiness certificate if such a document is required under Community law and/or driving with a very serious deficiency of, inter alia, the braking system, the steering linkages, the wheels/tyres, the suspension or chassis that would create such an immediate risk to road safety that it leads to a decision to immobilise the vehicle.
4. Transporting dangerous goods that are prohibited for transport or transporting such goods in a prohibited or non-approved means of containment or without identifying them on the vehicle as dangerous goods, thus endangering lives or the environment to such extent that it leads to a decision to immobilise the vehicle.
5. Carrying passengers or goods without holding a valid driving licence or carrying by an undertaking not holding a valid Community licence.
6. Driving with a driver card that has been falsified, or with a card of which the driver is not the holder, or which has been obtained on the basis of false declarations and/or forged documents.
7. Carrying goods exceeding the maximum permissible laden mass by 20% or more for vehicles the permissible laden weight of which exceeds 12 tonnes, and by 25% or more for vehicles the permissible laden weight of which does not exceed 12 tonnes.

ANNEX 3: ALCOHOL ON BUSES TO SPORTS EVENTS IN NI

The following is a summary of the guidance provided by the Department of Justice (DOJ) with regards to alcohol on buses to sporting event in Northern Ireland. The DOJ guidance in full can be viewed at:

[Alcohol on buses to sporting events](#)

JUSTICE ACT (NI) 2011 – ALCOHOL ON BUSES TO SPORTS EVENTS – GUIDANCE FOR BUS OPERATORS

The DOJ guidance note is intended to assist bus hire and service operators to prepare for the commencement and working of section 40 of the Justice Act (NI) 2011. Section 40 creates new offences around the possession of alcohol on certain buses en route to regulated sports matches.

PART 4 OF THE ACT – SPORT

CHAPTER 1 – REGULATED MATCHES

Section 35 and Schedule 3 (Regulated Matches)

Section 35, when read with Schedule 3, specifies which sorts of match are affected by each of the provisions in Chapters 2 to 5 of Part 4 of the Act. Bus companies will be most interested in the matches that are caught by the offences in chapter 3, section 40. These match types are listed in paragraphs 2 to 4 and 6 to 9 of Schedule 3. Association football matches are covered by reference to teams that represent a country or territory, or teams that represent member clubs of certain leagues, or national teams. Even where only one such team is playing in a match, the match is covered by the Act. Association football matches are therefore not regulated by reference to their home ground, but by reference to teams.

In practice, the association football matches affected are mostly those involving international teams, and matches in which one or both teams playing is a member of the IFA Premier League, IFA Championship, FAI Premier League or FAI First Division.

By contrast, gaelic games and rugby union matches are covered in Schedule 3 by reference to the status of their grounds under the Safety of Sports Grounds (NI) Order 2006. Under current legislation⁵⁸, these grounds are presently:

- Casement Park, Belfast
- Armagh GAA, Dalton Road, Armagh
- Celtic Park, Lone Moor Road, Londonderry
- Pairc Esler, Greenbank Industrial Estate, Newry
- Brewster Park, Erne Road, Enniskillen
- Healy Park, Gortin Road, Omagh
- Davitt Park, Francis Street, Lurgan
- Crossmaglen GAA, Dundalk Road, Crossmaglen
- Downpatrick GAA, Old Course Road, Downpatrick
- O'Neill Park, Lisnahull Road, Dungannon

⁵⁸The Safety of Sports Grounds (Designation) (No.2) Order (Northern Ireland) 2009

- Irvinestown GAA, Bridge Street, Irvinestown
- Loughguile Shamrocks GAA, Lough Road, Loughguile
- Derry GAA, Foreglen Road, Dungiven
- Corrigan Park, Whiterock Road, Belfast
- Ulster Rugby, Ravenhill, Belfast

Up to date information on association football teams, competition membership and designated gaelic games and rugby union grounds can be found at www.sportni.net or by contacting Sport Northern Ireland at:-

Sport Northern Ireland
 House of Sport
 Upper Malone Road
 BELFAST
 BT9 5LA
 Tel: 028 9038 3842
 E-mail: safetyofsportsgrounds@sportni.net

CHAPTER 3 – ALCOHOL ON VEHICLES TRAVELLING TO REGULATED MATCHES

Section 40 (Offences in connection with alcohol on vehicles)

This section of the Act creates two offences around the possession of alcohol (“intoxicating liquor”) on certain vehicles en route to regulated matches. The vehicles affected are “motor vehicles” with a capacity of 9 or more passengers, being used primarily to carry passengers for reward for all or part of a journey to a regulated match. A motor vehicle is (in effect) a motorised road vehicle. Train journeys are not covered by the offence.

There needs to be some element of “reward” to the driver or operator of the vehicle in carrying the passenger(s) to the match. In most instances this will reflect that a vehicle has been rented out for a period or that it has been hired for a particular journey, or that individuals pay the driver or the owner for taking them to the match.

The offences only catch journeys where the main intended purpose of carriage is to bring the passenger(s) to a regulated match – standard bus services whose specific purpose is not to bring passengers to attend a regulated match or whose route just happens to go near a regulated match are not caught. Nor do the offences catch journeys from matches.

One last point about journeys – the offences apply only when the vehicle concerned is in Northern Ireland. This is relevant particularly where the destination is a regulated match outside Northern Ireland, or where the journey to a match in Northern Ireland starts outside the jurisdiction.

Firstly, it is an offence for someone to be in possession of alcohol on such vehicles on such journeys.

There is existing law which covers the consumption of alcohol on Public Service Vehicles. PSV (Northern Ireland) Regulations 1985 prohibit the drinking of alcohol by passengers, with a penalty of a level 3 fine (£1,000). Section 40 of the Justice Act now creates an additional offence of *possessing* alcohol in the circumstances specified.

The second offence, in relation to such vehicles on such journeys, is knowingly to allow alcohol to be carried. This offence applies against the operator (as defined) of the vehicle, or his “servant or agent”, and against the person to whom the vehicle is hired, etc. The courts will decide in individual cases whether an owner, driver, etc knowingly permitted alcohol to be carried.

ENFORCEMENT

Sections 40 and 50 (Police powers of enforcement)

Section 40(6) allows the police to stop and search a relevant vehicle where they reasonably suspect an offence is being or has been committed under section 40. Section 50 enables the police to search someone they reasonably suspect of committing an offence under these provisions.

PREPARATION

This new legislation creates offences, not only in relation to the person carrying the alcohol, but also in relation to the driver / owner / operator of the vehicle. These groups will wish to consider how best to prepare so that they do not fall foul of the new offence, and in particular how to avoid any accusation that they “knew” alcohol was being carried. Some may decide to strengthen existing measures to ensure that no alcohol is taken onto specified vehicles. They may decide, for example, to make it clear at the point of booking, that alcohol will not be allowed onto the bus, in order to prevent any confusion difficulty at the time of the journey. The use of signage and the training of staff are two further issues to consider.

Further information

A copy of the Justice Act (Northern Ireland) 2011 may be purchased from The Stationery Office Limited (TSO) at 16 Arthur Street, Belfast, BT1 4GD, Tel: 028 9023 8451 or through TSO’s website at www.tso.co.uk. The legislation can also be found at www.legislation.gov.uk . On-going and up to date information and advice on association football, gaelic games and rugby union matches affected by section 40 of the Act can be obtained by contacting Sport Northern Ireland at:

Sport Northern Ireland
House of Sport
Upper Malone Road
BELFAST
BT9 5LA
Tel: 028 9038 3842
E-mail: safetyofsportsgrounds@sportni.net

Criminal Law Branch
Department of Justice
028 9052 7522