

STATES OF JERSEY



DRAFT COMMERCIAL VEHICLES (LICENSING OF OPERATORS) (JERSEY) LAW 202- (P.118/2021): COMMENTS

**Presented to the States on 14th January 2022
by the Environment, Housing and Infrastructure Scrutiny Panel**

STATES GREFFE

COMMENTS

Introduction

The Draft Commercial Vehicles (Licensing of Operators) (Jersey) Law 202-[\[P.118/2021\]](#), hereafter referred to as the 'draft Law', was lodged with the States Greffe on 17th December 2021 by the Minister for Infrastructure. If adopted, the draft Law will make provision for a scheme to license commercial vehicle operators. It is noted that the scheme intends to cover commercial operators of goods vehicles above 3.5 tonnes.

Prior to lodging, the Environment, Housing and Infrastructure Scrutiny Panel received the Minister for Infrastructure and Officers for a briefing on the proposed draft Law. The information gleaned by the Panel from this briefing is contained in these Comments for the benefit of the wider States Assembly ahead of the States' debate, which is currently scheduled for 8th February 2022.

Background and rationale for the draft legislation

During the briefing, it was explained to the Panel that the requirement for a commercial vehicle operator licensing scheme in Jersey had been under consideration for several years and was included within the 2010 Sustainable Transport Policy which had been approved by the States Assembly. Subsequently, the Minister for Infrastructure authorised the drafting of the legislation in 2017. In the interim, since May 2018, the Annual Roadworthiness Inspections commenced for heavy duty vehicles followed by that of medium goods vehicles in May 2019. The Department for Driver and Vehicle Standards (DVS) commenced policy development for the operators' licensing scheme during 2019-20 and undertook research with the United Kingdom Traffic Commissioner and the Isle of Man Road Transport Licensing Committee.

As a result of the research undertaken by DVS regarding a commercial vehicle operator licensing scheme that would be appropriate for Jersey, the Panel was informed that it had been identified that in order for the scheme to be appropriate, a balance would need to be achieved between the two schemes researched (the UK and the Isle of Man). It was the view of DVS that the UK scheme was more consistent with a 'tick-box' regime that would not necessarily offer tangible control or impact on standards for Jersey. Moreover, it was the view of DVS that the scheme implemented within the Isle of Man would be inclined to place an onerous and resource-intensive regime on a small industry. It was the intention of DVS to establish a Jersey framework within which the industry could operate whilst standards were being raised.

The Panel asked whether the DVS had a record of the fatal accidents linked to commercial vehicles and whether that could help to justify the draft Law. It was noted that it was in line with the Road Safety Review.

Government of Jersey's engagement with local industry

As a result of industry feedback and research undertaken by DVS, the Panel was informed that changes had been made to the initial draft scheme. It was noted that the scheme under the draft Law would:

- Not require a driver to undertake Certificate of Professional Competence (CPC) training

- Not require ‘Operator Compliance Risk Scoring’
- Not require obligatory CPC qualifications for internal and external transport managers, however, ‘relevant experience within the industry’ would be required instead
- Not require an annual audit, however, a risk-based approach for auditing would be utilised instead (as issues arose, they would be addressed accordingly by DVS)
- Not require an assessment of the operating centre, however, the operating centre would be required to comply with domestic legislation such as planning legislation
- Require transitional provision for existing operators which would seek to ensure continuity
- Not require mandatory contracts between operators and repair and maintenance providers (contracts were deemed unnecessary for Jersey)

The Panel was informed that the requirement for CPC training of drivers was removed as it was deemed a very broad requirement that would not benefit Jersey. In relation to ‘Operator Compliance Risk Scoring’, it was explained that this was a traffic light system that was utilised under the UK scheme. However, it was believed that this would be excessive for Jersey, and therefore was not included. It was noted that requiring internal and external transport managers to obtain obligatory CPC qualifications would not be beneficial within the Jersey context. It was noted that the requirement for an assessment of the operating centre was not included within the scheme as this would be too onerous for Jersey and it was DVS’s view that it would not be appropriate for how the industry operated in Jersey.

The Panel was informed that engagement had been undertaken with the local industry in November 2019 in order to review the proposals for the scheme. Subsequently, guides regarding the scheme were published on the Government of Jersey website in January 2020. It was explained that, although engagement was disrupted by the Covid-19 pandemic, engagement continued in early 2021. It was noted that an industry survey was undertaken in July 2021 followed by three virtual sessions which explored the outcomes from the survey. The Panel was informed that the actions resulting from the engagement were fed back to the industry.

In respect of the most recent engagement with the industry, the Panel was informed that key issues had come to light. It was noted that concerns regarding the role of the transport manager, the Periodic Safety Inspection periods, and the maintenance arrangements had been raised. In addition, concerns regarding the fee requirement. The Panel was informed that clarifications had been provided in respect of the above. Moreover, the contract between operators and maintenance providers had been removed from the scheme as a result. It was noted that the scheme guidance had been updated on the Government of Jersey website accordingly.

Requirements of the proposed draft Law

The Panel notes that under the draft Law operators would be required to observe the following key elements:

- A licence would be required by those who operated commercial vehicles on public roads that carry goods connected to trade, profession or business

- The licence would be issued for five years
- Operators and transport managers would be required to be of ‘good repute’ (it was noted that the industry was supportive of this element)
- Drivers would be required to undertake and record daily vehicle checks
- A pre-planned and recorded Periodic Safety Inspection for all vehicles would be required
- Adequate provisions for the repair and maintenance of the fleet would be required
- Drivers would be required to be appropriately trained (in respect of the role that they are undertaking)
- Annual roadworthiness inspections would be required
- The appropriate record keeping would be required to demonstrate compliance

Highlighting that operators and transport managers would be required to be of ‘good repute’, the Panel asked for the legal definition for ‘good repute’. The Legislative Drafter explained that the term was set out in the schedule to the draft Law and broadly followed the UK’s definition. She continued to explain that the term would not reference a single criterion but rather several requirements. For example, the Panel was informed that it would include consideration of convictions in relation to running a commercial business, convictions regarding waste management and convictions in respect of customs and excise. It was explained that the requirement was primarily to ensure professional competency was upheld and that the Jersey requirement was a much lighter version of what was required under the UK’s scheme.

With regard to the transitional arrangements for existing operators it was explained that the Inspector of Motor Traffic (IoMT) would seek to ensure that existing operators could continue to operate while their application was being considered. It was noted that an initial three-month period would apply for licence applications and that existing operators would be required to apply during that time. It was explained that should any existing operator fail to apply during the three-month period, they would then be regarded as a new operator. It was noted that DVS would be responsible for determining the applications and that the legislation would not apply until such time as the application was determined. The licence period would commence once the application was determined. The Panel was informed that the application period would be preceded by promotion and industry engagement.

Sanctions

In relation to the compliance requirements, the Panel was informed that DVS would provide support and assistance to the industry in meeting the terms of the licence. It was emphasised that sanctions would always be a last resort and would only be considered when all other avenues of assistance had been exhausted. It was explained that the risk-based approach to compliance would enable DVS to focus efforts on addressing the issues or indications which had demonstrated that the licence conditions were not being appropriately met. It was highlighted that it would be the responsibility of the operator to adhere to the licence conditions. It was noted that DVS would have the ability to audit the operation, if deemed necessary, through requesting and inspecting the operator’s records and entering the business premises. It was noted that DVS would engage with

operators when concerns arose and that the IoMT would consider any response which could include no action, further investigation or an audit, and the application of sanctions.

The Panel was informed that should action be proposed by the IoMT, the operator would be advised in writing. It was explained that the operator would have 21 days to respond as well as an opportunity to meet with DVS. Subsequently, the IoMT would determine any further action. It was noted that for any serious issues that immediate action would be taken.

In respect of the types of sanctions that could apply, the Panel was informed of the following actions:

- Issue a warning
- Suspend the licence
- Curtail the licence
- Revoke the licence
- Change or add any condition attached to the licence

The Panel was informed that the IoMT would also be able to disqualify operators or transport managers. It was explained that an appeals process would be available to operators and operators would be required to appeal additional licence conditions or any sanction within 21 days. It was noted that any action taken could be published.

Resourcing and operator fees

The Panel was informed that an annual fee per vehicle would be introduced in order to recover the costs incurred by the scheme. It was explained that the intention was to pay back the implementation costs over twenty years. It was noted that one Commercial Licensing Officer and one admin resource would be required to resource the function. The Panel was informed that the assumption had been based on the scope of 250 operators with 1,150 vehicles and it was noted that the annual running cost of the scheme was estimated at £110,000.

Regarding the fee structure, it was explained that an application fee, as well as a subsequent renewal fee, would apply. It was anticipated that a non-refundable fee for making the application and the subsequent renewal of the licence after five years would be in the region of £200. It was noted that the annual licence fee per vehicle covered by an operator's licence would be in the region of £90. The Panel was informed that a fees Order would set the fee level and would likely be in place by the end of 2022.

Noting that the fee structure would require £200 (per operator) and £90 (per vehicle) to be paid as well as any training costs, the Panel raised concern regarding the costs to operators and asked how the fees might impact smaller operators or even self-employed operators (operations involving one person). The Panel also raised concern that because of the increased costs to operators that the cost would be transferred to the consumer and could impact the viability of the operator. It was explained that, in the main, operators had not expressed concern regarding the costs and that many of the operators were already providing training and functioning in an appropriate manner.

General queries

The Panel sought clarification on how the scheme would link to driving licence categories. It was explained that no specific link existed in relation to driving licence categories. The Panel questioned whether there was a potential overlap between the scheme and a driving licence and raised concern of a potential duplication. It was explained that the draft Law was in respect of licensing operators and not competency for the driving of vehicles.

The Panel asked whether the training requirement under the scheme was mirrored in a driving test. It was explained that within the UK, to demonstrate competency to drive a vehicle, additional tests were undertaken to the theory and practical driving tests that were undertaken in Jersey. It was noted that the additional modules that would be undertaken within the UK would allow for the provision of a Driver's Certificate for Competence, however, in Jersey that did not apply. It was noted that as a result it had not been linked to the driving scheme and that the level of training required would reflect appropriate and adequate training dependent on the role. The Panel was informed that it could include aspects such as training for safely securing loads onto trailers and training for ongoing maintenance and inspection of vehicles.

The Panel questioned how a Jersey Police Officer, who had reason to believe that a vehicle was not in compliance with the licence conditions, would be able to prove that was the case when stopping a driver. It was explained that presently drivers of the vehicles would undertake daily inspections before heading out which were logged and that once the scheme was in effect, the record keeping aspect would be obligatory and required to demonstrate compliance with the scheme. Therefore, the records could be inspected and could be used as a tool to appropriately demonstrate compliance, as required.

The Panel asked how aspects such as overloading of vehicles would be monitored and whether a driver would be able to refuse to drive an overloaded vehicle. It was explained that the scheme would provide the tools and knowledge required for the driver to identify their responsibilities and when to accept or refuse to transport the load.

The Panel questioned, should an incident be identified, whether the driver of the vehicle or the operator would be held responsible. It was highlighted that the scheme would place the responsibility on the operator and therefore the operator would be required to ensure compliance with the legislation. It was noted that the scheme would enable drivers to be provisioned with the appropriate training.

The Panel asked how ineffective training would be avoided, such as a 'tick-box' approach and whether the training could be provided inhouse or through the DVS. It was noted that DVS would not provide training, however, that an inhouse operator or third-party bespoke training would be acceptable. It was further explained that the draft Law allowed for flexibility regarding the training and only required the training to be adequate in respect of the role in order to provide competency. It was noted that many reputable operators already provided relevant training for their drivers as required. It was explained that the operator could choose how the training was undertaken.

It was explained that the industry was very aware of the intention to propose the legislation as it had been under consideration since 2007. Moreover, it was explained,

from the perspective of the operator that it had been deemed important to create a fair and level playing field for business and the draft Law aimed to achieve that.

The Panel asked whether a reduction in the import of commercial vehicles was anticipated as a consequence of the legislation. It was explained that prior to inspections being undertaken in Jersey, the Island was seen as a dumping ground for commercial vehicles. However, currently people were investing in newer vehicles as a result.

Conclusion

In consideration of the information gathered from the briefing, the Panel is mindful of the need for the draft legislation to help improve commercial vehicle safety standards. However, the potential impact of the cost of the scheme for commercial operators is currently unknown. Should this proposition be adopted by the States, the Panel intends to keep a watching brief on the introduction and roll out of commercial vehicle licensing and any associated Fees Order. The Panel requests that the Minister for Infrastructure share the Draft Fees Order with the Panel once it is available.

In addition, the Panel **recommends** that the Minister ensures that both the Operators Guide (setting out the requirements of the licensing scheme) and the Guide to Maintaining Roadworthiness (explaining the responsibilities and systems involved in maintaining vehicles in roadworthy condition) are made available in multiple languages (English, Portuguese, Polish, Romanian, French etc.) online at the Government of Jersey website.