

# STATES OF JERSEY



Jersey

## **DRAFT COMMERCIAL VEHICLES (LICENSING OF OPERATORS) (JERSEY) LAW 202-**

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**Lodged au Greffe on 17th December 2021  
by the Minister for Infrastructure  
Earliest date for debate: 8th February 2022**

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**STATES GREFFE**





Jersey

## **DRAFT COMMERCIAL VEHICLES (LICENSING OF OPERATORS) (JERSEY) LAW 202-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Infrastructure has made the following statement –

In the view of the Minister for Infrastructure, the provisions of the Draft Commercial Vehicles (Licensing of Operators) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Deputy K.C. Lewis of St. Saviour**  
*Minister for Infrastructure*

Dated: 13th December 2021



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## REPORT

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### 1. Summary

This draft Law would make provision for a Jersey scheme for the licensing of Commercial Vehicle Operators.

The requirement for such a scheme in Jersey has been considered for a number of years and was included in the 2010 Sustainable Transport Policy approved by the States Assembly. Initial authority to begin the development of legislation was provided by the Minister for Infrastructure in 2017. It was originally intended to present the draft Law to the States in May 2020 however work on the scheme was postponed as a result of the Covid-19 pandemic.

This proposal is in alignment with and supports the ‘Safe Vehicles’ aspect of the ‘Safe Systems’ approach within the Government’s Road Safety Review, which is expected to be reported to the Assembly in December 2021.

Central to the scheme is the need to set and maintain standards which reflect industry best practice to provide a level playing field for all commercial vehicle operators in Jersey, whether they operate a large fleet or just one vehicle. These standards will be monitored by DVS and feedback provided to assist operators to achieve the objectives of safer drivers, safer vehicles, and safer journeys.

Commercial operator licensing schemes are common in large and small jurisdictions throughout the world, with the UK scheme having been in existence since the 1930s. Whilst the proposed scheme reflects both UK and EU best practice, it is specifically tailored for Jersey’s unique road traffic characteristics and its legislation framework. The arrangements proposed represent a lighter touch than those in larger jurisdictions and are proportionate to the particular circumstances in the Island.

The scheme covers commercial operators of goods vehicles above 3.5 tonnes and trailers, which includes Government or Jersey and Parish operations. Non-commercial, passenger/public service vehicles and agricultural tractors are excluded from the scheme.

The scheme sets out the main standards which must be adhered to, which include a requirement for ‘good repute’ amongst operators, the need to have a Transport Manager to oversee the operation and to have in place a strong regime of vehicle checks and maintenance covering daily drivers checks, regular periodic safety inspections, appropriate maintenance arrangements and a robust system of recordkeeping. This regime is regarded as an appropriate set of standards for all operators to adhere to; a number of well-established operators in the Island already comply with these requirements.

The proposed Law places a strong emphasis on operators complying with certain conditions relating to the operation of commercial vehicles and operators will be required to undertake to abide by these conditions as part of the application process.

Existing operators in the Island will be required to apply for a licence and transitional provisions will be put in place to ensure existing operators can continue to operate while their applications are considered.

The proposed Law provides the Inspector of Motor Traffic with the majority of powers, including issuing licences and taking compliance action, such as issuing warnings, suspending licences, revoking licences and undertaking reviews or audits of licence-holders. This is regarded as consistent with the current powers and status of the role of Inspector. The Minister for Infrastructure would have the powers to issue and publish

general guidance to the Inspector of Motor Traffic relating to the scheme, approve the standard conditions and make Orders for exemptions and fees.

Having received a licence, it would be the responsibility of the licence holder to maintain the commitments made and operate within its terms and conditions. Whilst the primary focus of DVS will be to assist operators to meet the terms of their licence, those who consistently fail to comply will be subject to compliance action by the Inspector of Motor Traffic. The draft Law provides the power for Traffic Officers to undertake audits, including reviewing records and inspecting vehicles and premises and enables the Inspector to issue a range of sanctions, from imposing conditions to suspending or revoking a licence.

Operators can appeal decisions of the Inspector of Motor Traffic to the President the Law Society. The Law Society is then required to identify three Lawyers, or if not available, two Lawyers, willing to form an Appeals Body for a specific appeal. This Body may decide to vary or substitute, uphold, or rescind the decision and must notify the Minister for Infrastructure of its decision.

The scheme has had implementation costs from 2019 to 2021 which will continue into 2022 and will require additional administrative support to support Traffic Officers in the running of the scheme. It is anticipated that these costs will be recovered through the payment of fees by licenced operators. The fee structure will comprise an application (and subsequent renewal) fee and an annual fee for each vehicle operated.

Engagement with the local industry has been ongoing with draft guidance documents being issued, a survey of the industry undertaken in June 2021 and follow up virtual engagement sessions undertaken by DVS in July 2021. The survey and follow-up sessions were designed to get final feedback from the industry on the proposals and responses were reviewed and adjustments to the scheme identified in response.

An ongoing programme of industry engagement events is being planned by DVS over the next year to ready the industry for the implementation of the scheme.

Assuming States adopt the Law and Privy Council sanction, there is considerable work to do to establish the necessary guidance, procedures and, crucially, Information Technology systems to support the licensing system. With this in mind, it is currently anticipated that the scheme will become operational, and the first applications will be received during Quarter 4 2022.

## **2. Introduction**

This report proposes that the States Assembly adopt a new Law to provide for the licensing of commercial vehicle operators in the Island which would be administered by the Driver and Vehicle Standards Department (DVS). This report sets out the reasons for and the implications of implementing the licencing scheme locally.

## **3. Background**

The need for a system of commercial goods vehicle inspections and vehicle operator licensing has been considered for a number of years. In 2008, a Working Group on the condition and maintenance of vehicles operating in Jersey, which comprised members of the local haulage industry, recommended, amongst other things, that ‘a system of vehicle operator licensing should be introduced in tandem with vehicle inspection and testing’.

As a result, the Island’s first Sustainable Transport Policy (STP), approved by the States Assembly in 2010, included the requirement to introduce commercial vehicle operator

licences that, amongst other things, required operators to have their commercial vehicles regularly checked for road worthiness.

Despite the STP recognising the benefits of a licensing scheme for operators of commercial vehicles, the current legislation does not provide the Minister with the power to issue such a licence and more importantly to have the power to remove it if the conditions set are not complied with.

As an interim step, in May 2018, the Minister made an Order under the [Road Traffic \(Jersey\) Law 1956](#) which enabled the Annual Roadworthiness Inspections of medium and heavy goods vehicles. All heavy goods vehicles (over 7500kgs had to be inspected by May 2019 and all medium goods vehicles (between 3500kgs to 7500kgs) had to be inspected by May 2020.

However, the annual inspection regime only establishes the condition of the vehicle on the day of the examination, so there remains a requirement for legislation which, by giving the powers to issue a licence to operators of specific classes of commercial vehicles, prescribing such conditions as may be specified in the licence, such as daily safety checks and regular maintenance regimes, and giving power to revoke or suspend the licence if it is not complied with, will help to ensure that the vehicles are safe to use on the road at all times.

Commercial vehicle operator licensing has been common within other jurisdictions, both in Europe and beyond, for many years. As examples, operator licencing schemes currently exist in:

- **The United Kingdom** – Through the Office of the UK Traffic Commissioner.
- **The Isle of Man** – Through the Road Traffic Licencing Committee.
- **European Union** – All EU countries have their own operator licensing schemes, under a framework agreed by the European Commission.
- **Other Countries** – Operator licensing schemes exist across the world, including the United States, Canada, Japan, Australia and New Zealand.

The scheme originally intended to be presented to the States during 2020, however as a result of the Covid-19 pandemic, all work on the scheme was postponed and the timescales revised to those included within this report.

#### 4. The policy position

Officers received initial authority to start this work in December 2017 when the Minister for Infrastructure approved the preparation of law drafting instructions for legislation giving powers to issue a licence to operators of any class or classes of commercial vehicles, prescribe such conditions as may be specified in the licence and be able to revoke or suspend the licence if conditions are not complied with ([MD-T-2017-0100](#)).

As the authority for vehicle and road safety legislation administration and enforcement in Jersey, DVS continues to strive to improve and promote vehicle road safety in line with best practice to the benefit of all Islanders.

The policy aims of the licensing scheme are to:

- improve and promote vehicle road safety in line with best practice to the benefit of all Islanders;
- ensure that all commercially operated goods vehicles and trailers being used in Jersey are maintained and operated to a set of recognised standards for use on Jersey's roads;

- improve the environmental credentials of commercial vehicles in Jersey;
- ensure that industry best practice becomes the benchmark for local operators creating a level playing field within the industry.

Central to this is the need to set and maintain standards which reflect industry best practice to provide a level playing field for all commercial vehicle operators in Jersey, whether they operate a large fleet or just one vehicle. These standards will be monitored by DVS and feedback provided to assist operators to achieve the objectives of safer drivers, safer vehicles and safer journeys.

In order to ensure clarity, DVS first spent time developing a guiding framework both for the enabling legislation and future operational guidelines and procedures. In developing this, DVS undertook fact-finding visits to both the UK Traffic Commissioner's office in Cambridge and the Road Transport Licensing Committee in the Isle of Man. The main elements of this scheme were initially presented to the local industry in November 2019 and included in a draft guidance document which was originally circulated to the industry in January 2020. Industry engagement was recommenced in 2021 and guidance documents updated.

The proposed Licencing system is in alignment with the Government's Road Safety Review, which is currently being undertaken across government departments, and key external stakeholders. The results of the review are expected to be reported in December 2021.

It is understood that the review is likely to recommend adoption of the Safe System Approach to Road Safety which is the recognised professional approach utilised throughout Europe and which emphasises a multi-layered approach making road users, the roads, and the vehicles which use them all safer.

The proposals for the regulation of commercial vehicle operators included within the proposed legislation very much embrace the 'Safe Vehicles' aspect of the 'Safe Systems' Approach and the scheme has been identified as one which fully supports the objectives of the Road Safety Review.

The main policy elements on which the scheme is based are set out below:

- All commercial goods vehicle operators in Jersey will require a licence to operate vehicles on the public roads.
- Every licenced commercial vehicle operator must have a designated Transport Manager to be responsible for the effective and continuous management of the transport operation.
- Operators must ensure all drivers are adequately trained to ensure they are competent for the work they are required to undertake.
- All vehicles operated under an operator's licence must be maintained in a safe and roadworthy condition and evidence of this must exist.
- Compliance activity will aim to ensure commercial operators are working within the licensing scheme and the conditions laid out in their licence.
- Fees will be set in order to recover the costs of operating the licensing scheme and compliance activity.



## 5. Engagement with the Local Industry

DVS estimates that there are c. 250 commercial vehicle operators in Jersey who will require licences under the Law, with approximately 1,150 vehicles in scope.

Consultation with the industry was initially undertaken in the form of group meetings which took place in March 2016 and March 2017. In advance of the March 2017 consultation, a draft manual was circulated setting out the proposed operator licence scheme for comment.

After the Minister authorised the development of Law drafting Instructions, in May 2018 DVS wrote to the industry regarding Annual Roadworthiness Inspections. In addition, a further consultation event was held with the industry about operator licences in October 2018.

On 6th November 2019, DVS hosted two engagement sessions with the industry to provide an update on the proposals for operator licensing and provide opportunities for feedback.

On 17th January 2020, DVS circulated two revised draft guidance documents for comment; *'The Operators Guide to Commercial Vehicle Licensing'* and *'The Jersey Guide to Maintaining Roadworthiness'*. Both of these documents can be found on the Government website.

Planned engagement early in 2020 was disrupted by the Covid-19 pandemic, which led to the work on the scheme being postponed until early 2021.

In May 2021, DVS appointed an external company to undertake a survey of the industry designed to seek opinions and feedback about the licensing scheme. This survey was issued to the industry in June 2021 and the results fed back by DVS through live video sessions during July.

Three live sessions were run during July; these provided overall feedback on the survey and sought to provide clarity to scheme elements which had been the subject of particular comment or concern, including maintenance arrangements, periodic safety inspections and the requirement for Transport Managers.

As a result of this engagement, the requirement for a formal contract between an operator and an external maintenance provider has been removed from the scheme because of the feedback received as to the nature of the maintenance industry and the difficulties such a requirement could cause locally. In addition, efforts have been made to make guidance clearer on the requirement for a Transport Manager and the required timings of periodic safety inspections.

As would be anticipated, some concern was expressed regarding the fees associated with the operation of the scheme and the live sessions included an explanation of the rationale for the fees and what they covered in terms of the delivery of the regulatory arrangements.

The actions taken as a result of this engagement process were reported back to the industry and the scheme guidance was updated. The updated scheme guidance, plus the recordings of the live video sessions with the industry can be found via the following link to the Government website:

<https://www.gov.je/Travel/Motoring/CommercialVehicleOperators/Pages/CommercialVehicleOperatorLicenceScheme.aspx>

DVS intends to continue industry engagement and plans to establish a programme of regular engagement events throughout 2022, which will be designed to provide detailed information on the scheme and support the industry in its compliance with the new legislation.

## 6. A Licensing Scheme for Jersey

Whilst the proposed scheme reflects both UK and EU best practice, it takes into consideration Jersey's unique road traffic characteristics and its legislation framework and suggests proportionate arrangements that are regarded as appropriate to the particular circumstances in the Island. The feedback received from the industry and the subsequent adjustments made to the scheme have further contributed to the creation of a scheme that is appropriate to Jersey.

As an example, the UK scheme, which has been in place since the 1930s, is considerably broader in its powers than the proposed Jersey scheme and is based on a comprehensive and robust system of ongoing assessment of operators. The UK Traffic Commissioner has a range of powers, some of which are not thought to be appropriate to Jersey.

Items covered by the UK scheme but *excluded* from the proposed Jersey scheme include:

- The formal assessment and approval of Operating Premises as part of an application or variation.
- The evaluation of the financial standing of operators as part of the application and ongoing compliance process.
- The requirement for all Transport Managers to hold a recognised 'Certificate of Professional Competence'.
- The requirement for drivers to hold a recognised 'Certificate of Professional Competence'.
- The use of public inquiries to deal with significant compliance issues.
- The requirement for formal contract arrangements between an operator and a maintenance provider.

The Jersey scheme includes a compliance process which will be aimed at assisting operators to meet the terms of the licence and thereby ensuring consistent standards are maintained. DVS will provide advice and support throughout the process of dealing with any issues arising or incidents occurring which may contravene licence conditions. The proposed compliance process therefore seeks to provide a range of measures to address issues that arise, from informal discussions through to the suspension or revocation of a licence.

It is therefore anticipated that only those operators who consistently fail to meet the standards or implement recommended actions will be subject to action. Even then, serious action such as revocation or suspension would generally only come after a prolonged but ultimately unsuccessful period of seeking to work with the operator to improve the safety of the operation.

## 7. Commercial Vehicle Operator Licensing: An overview

The draft Law sets the scope of the licensing scheme, enables licences to be issued, conditions to be specified, enables DVS to enforce compliance and provides the ability to be able to take action, including being able to revoke or suspend the licence if it is not complied with.

### 7.1 Authorisation

The draft Law provides the Inspector of Motor Traffic with the majority of powers, including to approve and issue licences, impose specific conditions, inspect premises,

request records and stop unauthorised activity. The Inspector would also have the powers to take compliance action, such as issuing warnings, suspending licences, revoking licences and undertaking reviews or audits of licence-holders.

These powers will be subject to the issuing of general guidance from the Minister for Infrastructure, which the Inspector of Motor Traffic must have regard to when exercising any function under the Law. Any general guidance issued by the Minister must be published on the Government of Jersey website.

The Minister for Infrastructure would also have the powers to approve the standard conditions which will appear on all licences (see draft at **Appendix 2**) and to make Orders for exemptions and fees. The States Assembly would have the powers to change the definitions and scope of the Law by Regulations.

Providing the Inspector with such powers is consistent with other existing powers under various Laws, including the [Motor Traffic \(Jersey\) Law 1935](#), the [Motor Vehicle Registration \(Jersey\) Law 1993](#). Examples of existing powers under these Laws includes:

- Deciding whether applicants are fit and proper to drive Public Service Vehicles.
- The suspension of Public Service Vehicles fitness certificates.
- Maintaining the register of Motor Vehicles.
- Deciding whether to renew or issue trade licences.
- Deciding whether persons are fit and proper to be registered as driving instructors.

These powers also sit well with fact that the Inspector, unlike civil servants generally, is under a duty to the Royal Court. This is the duty to “well and faithfully discharge” the duties of the office of Inspector by reason of the oath which the Inspector is required to take under Article 3 of the Motor Traffic (Jersey) Law 1935.

This is also consistent with the UK, where operator licences are granted by a Traffic Commissioner and action is taken (e.g. suspend, revoke, disqualify etc.) by a Commissioner. Traffic Commissioners are appointed by the Secretary of State.

## 7.2 Scope of the Law

An operator’s licence will be required for those who operate commercial vehicles on public roads that carry goods or cargo in connection with a trade, profession, or business. The definition of an operator in the Law includes the Government of Jersey and the Parishes who will also require operator licences where they operate in-scope vehicles.

The scheme covers the following commercial vehicles:

- Goods vehicles with a gross vehicle weight (GVW) of greater than 3,500kg.
- Draw Bar Trailers, including Semi-trailers, with an un-laden weight greater than 1,020kg.

The operator’s licence must be held by the person – whether an individual or a company – who ‘uses’ the vehicle, which can be:

- The driver, if they own it or if they are leasing, buying on hire purchase terms, hiring, or borrowing the vehicle (e.g. a typical owner-driver operation).

- The person whose servant or agent the driver is – i.e. whoever employs or controls the driver.

Under the Law an exemptions Order can be made by the Minister to exempt certain vehicles from the scheme. It is proposed these exemptions will include Operators not based in Jersey who wish to operate commercial vehicles within the scope of the scheme temporarily on the Island, though only if they have either a UK or EU recognised operator's licence. If not, an application must be made for a temporary licence before vehicles operate in the Island.

### 7.3 The Licence

The Inspector must issue an operator's licence if satisfied that:

- The applicant and the proposed Transport Manager are of 'good repute'.
- The proposed Transport Manager is professionally competent.
- There are satisfactory facilities and arrangements for maintaining vehicles in a fit and serviceable condition.
- The application is in the right form and includes all the required information.
- The application fee has been paid.

Licences will typically be valid for 5 years, however Inspector of Motor Traffic will have the power to issue a licence for a shorter period, depending on the circumstances of a particular application.

A register of licence holders will be maintained, with each entry containing information about the business, such as relevant addresses, the vehicles under the licence and the conditions to which the licence is subject.

A list of the names of licence holders will also be made available for public inspection on the Government of Jersey's website.

### 7.4 Licence conditions

The draft Law places a strong emphasis on operators complying with certain conditions relating to the operation of commercial vehicles. These conditions will set out in detail the commitments to be made by the operator under the licence and the operator will make a declaration stating that they will comply with these conditions as part of the application process.

The standard conditions, to which all operators would be expected to comply, must be approved by the Minister for Infrastructure and a draft of these can be found at **Appendix 2**.

The Inspector of Motor Traffic will also have the power to impose specific conditions on a particular operator, for example as a result of issues arising from the application process or as a sanction in response to an issue arising from the compliance process.

### 7.5 The application

Operators will be required to apply to the Inspector of Motor Traffic for a licence providing relevant information to enable the application to be determined.

As part of the application, operators will have to make a declaration to abide by all the licence conditions and also include a separate declaration from the proposed Transport

Manager, confirming their understanding of duties and that they will provide effective management of the operation.

The operator will need to pay a non-refundable application fee to cover the costs of the application process.

Applications will be assessed against the requirements of the scheme and further information, or investigation may be required before a licence can be issued.

Operators will be able to apply to have their licence renewed up to 6 months before the licence expires.

## 7.6 Transitional provisions

The draft Law will make provision for transitional arrangements to bring the existing industry into the licensing scheme, enabling operators to apply to join the licensing scheme whilst continuing to operate, pending a decision on their application.

At this stage, it is the intention that all existing operators will become licensed, however this will be conditional on the satisfactory provision of information as part of the application process.

The draft Law sets out the following transitional application process:

- Once the Law has come into force, existing operators will be required to make an application within 3 months of this date. During this period, the requirements of the Law will not apply to operators.
- As long as an application is made within the initial period, the requirements of the Law will not apply to operators until such time as the application has been determined.
- The period of the Licence will start once the application has been approved and the licence issued.
- Existing operators who fail to make an application within the initial period will be regarded as new applicants and will not be able to operate until a licence has been issued.

The transitional period will be supported by strong promotion and engagement with the industry in the period leading up to the Law coming into force to ensure operators are aware of their responsibilities under the Law.

## 7.7 Variations

Operators will be required to update the Inspector of Motor Traffic on an ongoing basis about changes in their operation that may affect the licence conditions.

It is intended that operators will be required to notify the following changes to DVS within 7 days:

- Adding or removing vehicles to/from the fleet.
- Changes to the timings of Periodic Safety Inspections for vehicles.
- Vehicles that are temporarily taken off the road.
- Changes to the Transport Manager arrangements.
- Changes to the business, including ownership, directors, and address.
- If the business has closed or been declared bankrupt or ‘*en desastre*’.
- Any relevant convictions.

Depending on the nature of the variation, some requests may be subject to approval or further investigation by the Inspector of Motor Traffic.

In addition, the Inspector of Motor Traffic will have the power to vary the licence in response to the outcome of compliance activity, for example reducing the number of vehicles operated or imposing new conditions. The Law provides for the Inspector to give notice of any such variations and provide the licence holder with an opportunity to make representations with respect to the proposed variation. Such action can be subject to appeal by the licence holder

### 7.8 Transport Managers

This is seen as a crucial role and one Transport Manager must be identified for each licenced operator. The designated Transport Manager may be internally or externally appointed and must be professionally competent to discharge the role and be accountable for the management of the operation.

Transport Managers who are nominated on an operator's licence must also satisfy the requirement of good repute, as defined by the draft Law. The Inspector of Motor Traffic can take action against Transport Managers who are no longer of good repute or are declared unfit and individuals can be disqualified from occupying the role, either permanently or temporarily.

A Transport Manager must also have a genuine link to the organisation, either by being internal (the business owner or an employee) or external (engaged under the terms of a contract with the vehicle operator).

As part of the engagement with the local industry described above, DVS were able to clarify with operators that the Transport Manager did not need to be an additional new role within the organisation and could be undertaken by existing team members with the required competence. In such cases, the role would therefore not result in any additional cost to the business. For example, in the case of a sole operator, this person could take the role of Transport Manager as defined in the Law.

More detail on the role of the Transport Manager is set out in the '*Jersey Guide to Commercial Vehicle Operator Licensing*'.

### 7.9 Driver Training

Under the scheme, Operators must ensure that any commercially operated vehicle is only driven by those who have received appropriate training in the safe driving, operation and safety checking of such vehicles.

The scheme is not prescriptive about driver training; It is left to the discretion of the Operator to determine what training is required and ensure that adequate training is provided to ensure drivers are competent in their work activities.

### 7.10 A system of vehicle checks and maintenance

Central to the proposed scheme is that vehicles operated under a licence must be maintained in a safe and roadworthy condition and evidence of this must exist.

As part of this, operators must undertake maintenance which aims to prevent the development of serious defects on vehicles and to ensure that vehicles are always in a safe and reliable condition.

Detailed draft guidance on this specific area has been published and circulated to the industry. The draft '*Jersey Guide to Maintaining Roadworthiness*' sets out in detail the

responsibilities and systems involved in maintaining commercial vehicles in a roadworthy condition. This guide includes practical advice on how to devise, install and monitor a system for ensuring roadworthiness.

The requirement to establish an appropriate system of maintenance will be set out in detail in the licence conditions, however key elements of this maintenance systems should include:

- **Daily/first use walk around checks** – Often significant defects found at the roadside could have been prevented by the driver conducting an effective walkaround check at the vehicles first use. Undertaking an effective walkaround check, acting on what is found and recording any action is an important part of a driver's duties.
- **Reporting and recording faults** – Operators must have a system of reporting and recording faults that may affect the roadworthiness of the vehicle. This must include how they were put right before the vehicle is used.
- **Periodic safety inspections** – A full in-depth inspection of a vehicle must be carried out by suitably trained persons and at a frequency appropriate to the type and usage of the vehicle. Periodic safety inspections should, where practicable, be programmed to follow a time-based pattern. The frequency at which inspections are undertaken should be determined by assessing the level of mechanical degradation likely to be incurred over a period as a result of the vehicle's usage.

The frequency of inspection for each vehicle will be reported by the operator to the Inspector of Motor Traffic as part of the licence application and renewal process. The draft '*Jersey Guide to Maintaining Roadworthiness*' suggests that the frequency of these inspections should be between 4 and 13 weeks. It is not recommended that any Periodic Safety Inspection interval be outside of the 13-week window.

- **Safety inspection and maintenance facilities** – Where safety inspections and maintenance are undertaken at the operating premises, these facilities must be safe and appropriate for the work being undertaken and these facilities can be inspected by DVS as part of its compliance function. Guidance on what inspection facilities should include can be found in the draft '*Jersey Guide to Maintaining Roadworthiness*'.
- **System of record keeping** – Crucial to demonstrating compliance will be the keeping of records for each vehicle, including maintenance, defect reports, inspection certificates and other relevant vehicle documentation. Records must be kept for 15 months and be available for inspection at the operating premises or provided to DVS on request.

The aim is that, by following the above simple measures, operators can prevent the development of serious defects and ensure vehicles are always in a safe and roadworthy condition.

#### 7.11 Good Repute

Good repute is a mandatory requirement for a licensed commercial vehicle operator.

The basis for good repute will be assessed on factors such as whether there are relevant criminal convictions and the general fitness to hold an operator licence.

The schedule to the draft Law sets out what the Inspector of Motor Traffic can have regard to, when considering good repute, which includes:

- **Convictions** – Any relevant convictions of the operator, employee or agent of offences relating to or involving vehicles or any offence resulting in a fine of over £1,000 or a custodial sentence exceeding 3 months.
- **General fitness** – Any other information which appears to the Inspector to relate to the operator, agent or employee’s fitness to hold a licence. This may include evidence of failure to pay taxes, health and safety breaches and other acts or omissions which allow a licence holder to compete unfairly with other operators. Multiple failures to abide by the conditions of the licence may also be considered under the requirement of good repute. Where the Inspector of Motor Traffic finds that trust has been abused, this may lead to the loss of good repute.

Good repute will be subject to specific guidance to the industry provided by DVS.

### 7.12 Compliance

It will be the responsibility of the licence holder to maintain the commitments made to the Inspector of Motor Traffic and operate at all times within the terms and conditions of their licence.

Whilst it must be stressed that the primary focus of DVS will be to assist operators meet the terms of their licence, those who consistently fail to comply with conditions or implement recommended actions will be subject to compliance action by the Inspector of Motor Traffic. The compliance process is set out in detail in the *‘Jersey Guide to Commercial Vehicle Operator Licensing’*.

The draft Law includes criminal offences for non-compliance and also provides the Inspector of Motor Traffic with a range of powers to undertake investigations. As part of its compliance activity, Traffic Officers will have the power to:

- Inspect or request records.
- Enter business premises with the operator’s consent or with a warrant issued by the Bailiff or a Jurat.
- Inspect vehicles, either in situ or at the DVS inspection centre.
- Undertake audits.
- Direct an operator to stop unauthorised activity.

A risk-based approach to compliance will be taken; compliance activity will be focused on issues identified or information received indicating that licence terms are not being met. There is no intention, for example, to undertake regular audits of an operation; such action will only be driven by evidence that licence conditions are not being met.

The Inspector of Motor Traffic’s primary focus will be to assist operators in meeting the terms of their licence and to engage with operators to understand the nature of their problems

before deciding whether to act. Whilst it is important and necessary for the Inspector to have a range of compliance powers it is anticipated that sanctions will only be invoked after an extended period of unsatisfactory engagement or if the operator fails to engage with DVS.

Whilst the draft Law supports compliance activity, the compliance process has been set out in the *‘Jersey Guide to Commercial Vehicle Operator Licensing’*. This process will be subject to more detailed guidance, but includes the elements set out below.



### *Considering action*

When evidence is identified that causes concern, the Inspector of Motor Traffic will initially engage with the operator to understand the nature of the problem before deciding whether to take action. As part of this process, the operator may be invited to a private meeting to attempt to determine what the problem is and see if assistance can be provided. Following this, the Inspector will decide whether action is required.

### *Taking action*

If the Inspector of Motor Traffic decides to take action, the issues will be set out, along with the proposed course of action and the operator will be advised in writing. Normally, the operator will be given 21 days to respond in writing and provided with an opportunity to meet with the Inspector.

After this meeting, the Inspector of Motor Traffic will decide on the course of action, which may include:

- (1) No action.
- (2) Applying sanctions.
- (3) Auditing the operator to establish more information.

If the issue is very serious or is regarded as an issue of public safety, the Inspector of Motor Traffic may decide to take immediate action.

### *Sanctions*

The Inspector of Motor Traffic can impose sanctions such as reducing the number of vehicles that can be operated, suspend or revoke the operator Licence. The process will seek to balance the negative points which caused the concern in the first place together with any positive steps which the operator has taken to address these concerns.

The Inspector of Motor Traffic may impose the following sanctions:

- Issue a warning.
- Suspend the Licence.
- Curtail the Licence (e.g. reduce the number and or type of vehicles operated through a variation to the licence).
- Revoke the Licence.
- Change or add any condition attached to the Licence.

The Law also enables the Inspector of Motor Traffic to take action to disqualify individuals who have lost good repute, which includes business owners, directors, and Transport Managers.

The Inspector of Motor Traffic may decide to publicise a decision and the reasons for it if it is thought to be in the public interest to do so.

### *When action may be appropriate*

The Inspector of Motor Traffic will consider taking disciplinary action against the holder of an operator's Licence if non-compliance is discovered either through an audit or other means.

Action may be initiated for the following types of non-compliance:

- The owner or persons connected with the business being convicted of relevant road traffic or other offences.
- Finding out false statements have been made to get a licence, or not keeping to an agreement made when the licence was applied for.
- An undertaking or condition on the licence has been broken.
- DVS Traffic Officers or the Police have issued a defect notice on a goods vehicle or there has been a conviction either resulting from the defect notice or a failure to comply with it.
- The owner has persistently failed to maintain the vehicles used under the licence in a good and serviceable condition.
- The licence holder is made bankrupt or '*en Désastre*'.
- There has been a material change in any of the circumstances of the licence holder relevant to the licence.

### *Audits*

The draft Law provides for Traffic Officers, on the instruction of the Inspector of Motor Traffic, to undertake an audit or assessment of any licensed operator; however, it is the intention that these would normally take place in the following circumstances:

- As a result of the Inspector of Motor Traffic wishing further information and evidence relating to an issue or a proposal to take action.
- When a specific incident or issue comes to light which in the opinion of the Inspector of Motor Traffic requires further investigation.
- As a result of a first audit; a follow-up may be scheduled.
- As a result of an operator's request to vary the licence.

The audit would normally comprise a review of documentation against licence conditions, which will be undertaken on a sample basis. Walkaround checks of some vehicles will be required in order to verify documentation and records. The audit will be documented, including establishing and identifying recommendations for improvement or corrective actions which need to be completed, including timescales.

## **8. Appeals**

An important element of the scheme is the right of appeal. The draft Law provides for the operator or other person dissatisfied with a decision, to be able to appeal at a number of points, including:

- The refusal of an application.
- The imposition of a variation/condition by the Inspector of Motor Traffic.
- The refusal to vary the licence as requested by the operator.
- A notice requiring cessation of unauthorised use.
- A decision to revoke or suspend a licence.
- A disqualification of persons associated with the operator, including the Transport Manager.

An appeal against any of the above decisions must be made within 21 days and can be on any matter of fact or law.

As the Inspector of Motor Traffic would have the power to make most of the decisions under the new scheme, it is proposed that the first appeal will be to the President of the

Law Society who will then be required to appoint two or three Lawyers to form an Appeal Body established for the purposes of the specific appeal only. In the event two Lawyers are appointed, provision is made in the Law for resolution of any disagreement.

The Appeal Body can determine any procedure it deems appropriate to determine the appeal but must give the appellant adequate opportunity to make representation as part of the process.

This Body may decide to vary or substitute, uphold, or rescind the decision and must notify the Minister for Infrastructure of its decision.

If the appellant remains dissatisfied after the Appeal Body has made a decision, the appellant has a further right of appeal to the Royal Court on any matter of fact or Law.

## **9. Fees**

Fees will be set in order to recover the costs of establishing and operating the licensing scheme and compliance activity.

DVS has undertaken financial modelling to establish both set up and ongoing running costs of the scheme and, based on the volumes of operators and vehicles, this suggests the following fee structure will be required:

- A non-refundable fee for making the application and the subsequent renewal of the licence after 5 years – likely to be in the region of **£200**.
- An annual licence fee per vehicle on the licence – likely to be in the region of **£90**.

These fees will be subject to refinement by DVS based on the required operating model to run the licensing system and will be set through a fees Order towards the end of 2022.

## **10. Timescales**

Assuming approval of the Law and Privy Council approval, it is currently anticipated that the scheme will become operational, and the first applications will be received during **Quarter 4 2022**.

## **11. Financial and manpower implications**

Considerable further work is required to finalise arrangements for the licensing scheme in order for it to be implemented in the latter part of 2022.

DVS officers, with Project Management support, will be required to develop processes and systems for taking and determining applications, along with developing a robust compliance process which enables it to work with local operators to achieve consistent standards.

This work will include the implementation of necessary IT support which will be designed to streamline administrative processes and reduce the effort required on both DVS and the industry. In addition, DVS will continue its engagement and communications programme with the industry throughout 2022 to raise awareness and ensure local operators are ready to meet the requirements of the scheme.

The estimated costs for the implementation of the scheme from 2019 to 2022, including IT system development have been estimated at a total of £350,000. The costs relating to the rest of 2021 and 2022 has been budgeted for within the DVS revenue budget.

In terms of ongoing resource implications, DVS currently envisage that the scheme will run by a Commercial Licensing Officer from agreed headcount and an administration resource which will be an additional post within the department.

The initial modelling to develop the proposed fee structure has been undertaken on the basis that fees will cover all the project set up and ongoing revenue costs to the department. The intention is that the Vehicle Operator licencing scheme will therefore present no additional costs to Government.

## **12. Human Rights**

The notes on the human rights aspects of the draft Law in **Appendix 1** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

**APPENDIX 1 TO REPORT****Human Rights Notes on the Draft Commercial Vehicles (Licensing of Operators) (Jersey) Law 202-**

These Notes have been prepared in respect of the Draft Commercial Vehicles (Licensing of Operators) (Jersey) Law 202- (“the **draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”), as given effect in the Island by the Human Rights (Jersey) Law 2000.

**These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.**

The draft Law would establish a new scheme for licensing the operators of large commercial vehicles, including large trailers, in the Island. Statutory licensing schemes can engage several of the rights guaranteed under the ECHR. In this instance, three of ECHR rights are potentially engaged.

They are the right to a fair hearing (Article 6), the right to respect for private and family life (Article 8) and the protection of property rights (Article 1 of the 1st Protocol).

**ARTICLE 6 rights**

Article 6(1) of the ECHR, which provides that –

*“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”*

Article 6 of the ECHR applies if the civil rights and obligations of the applicant are in issue, there is a dispute as to those civil rights and obligations, and the proceedings are determinative of those civil rights and obligations. This could arise in cases where an application for a licence to operate commercial vehicles is refused, revoked or made conditional or where a transport manager is disqualified, for example.

A key requirement of Article 6 of the ECHR is the need for access to a fair and public hearing within a reasonable time “by an independent and impartial tribunal”. The independence in question here is independence from the executive, the parties and the legislature. Access to an independent and impartial tribunal may be granted in two ways: either the decision-making body itself complies with the requirement of Article 6(1) of the ECHR, or the decision-making body is subject to control by a body which complies with the requirements of Article 6(1) and which has full jurisdiction.

The initial licensing decisions under the draft Law will be taken by the Inspector of Motor Traffic (IOMT), who cannot be regarded as fulfilling the requirements of Article

6, particularly as to independence and impartiality. Any person who wishes to contest a decision of the IOMT must therefore have access to an Article 6 compatible tribunal.

Article 17 therefore provides for a right to appeal from decisions of the IOMT to, in the first instance, a specially created appeal body comprising three practising Jersey lawyers and a right to a further appeal against the appeal body's decisions to the Royal Court. The new appeal body will be independent and impartial and will have full jurisdiction to deal with the appeal. Its decisions will be binding on the parties and enforceable. This procedure will satisfy the requirements of Article 6 of the ECHR. In addition, however, there will be a further right of appeal to the Royal Court on matters of fact and law. That of itself will also fulfil the article 6 requirements.

Accordingly, the process for making licensing decisions under the draft Law is compatible with Article 6 of the ECHR.

### **ARTICLE 8 rights**

The next ECHR right engaged by the draft Law is the right to respect for private and family life, home and correspondence, under Article 8 of the ECHR.

Article 8 provides –

- “1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”*

This right may be engaged by provisions of the draft Law which confer powers to enter and inspect property and to remove and copy documents etc. Such powers can be found in Articles 9, 10 and 11 of the draft Law.

The right can in some instances apply to a company's registered office or place of business. In such cases, a State Party's legislature has more latitude, or a wider “margin of appreciation” as it is technically termed, in relation to powers of entry and search of such premises.

The aim of the draft Law is to improve road safety in Jersey by ensuring that large commercial vehicles are fully maintained and operated in safe circumstances by licensed operators who are obliged to observe requirements which may be imposed in their licence. Such a scheme is to be found already in many other jurisdictions including several parts of the British Isles and can be said to be necessary in a democratic society in the interests of public safety.

The draft Law also contains restrictions and safeguards against abuse of such powers, including, powers of entry being restricted to the operating premises of a licence holder, and the requirement of a judicially issued search warrant to enter premises, if consent is not obtained, issuing of receipts for any documents removed and copies of such documents when asked for as well as protecting legally privileged documents.

The provisions of the draft Law which permit the exercise of such powers are therefore compatible with Article 8 of the ECHR.

**ARTICLE 1 PROTOCOL 1 Rights**

Finally, it is necessary to consider the draft Law in respect of its engagement with the rights guaranteed by Article 1 of the First Protocol to the ECHR which reads –

- “1. *Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
2. *The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”.*

Firstly, it may be noted that this Article specifically includes the property rights of legal persons, such as corporate bodies, as well as natural persons. The second important thing to have in mind in relation to this Article is that the jurisprudence of the European Court of Human Rights has established that States have a wide margin of appreciation, or discretion to decide what limitations on the use of property are in the public interest. The Court has said that the second paragraph sets the Contracting States up as sole judges of the “necessity” for such a law in “the general interest”.

. To be deemed compatible with Article 1 of Protocol 1, the interference must fulfil certain criteria: it must comply with the principle of lawfulness and pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised.

The draft Law would not provide for the deprivation of property as mentioned in the first paragraph of Article 1 of Protocol 1, but could amount to controls on the use of property, such as where an operator of commercial vehicles finds that they cannot operate their business as they wished to or to the same extent after a licence is refused, revoked or made subject to conditions, for example. As explained above, the operator has rights to challenge such decisions under the appeal processes. And further a licence issued to an operator could be, in itself, a possession, which might be affected by a licensing decision.

From the point of view of compatibility with the Article 1 Protocol 1 rights, therefore, the draft Law may have an impact on the use of property, which to be compatible with the ECHR, must be in the general interest. The general or public interest in pursues by the draft Law is, as mentioned earlier, the objective of improving road safety.

Further, to be compatible the measures must be ascertainable and lawful, or provided for by law; they must also strike a fair balance between the demands of the general community and the rights of individuals.

The draft Law will fulfil the requirements of certainty and lawfulness and the licensing scheme it will establish will strike a fair balance between the general interest in the safe operation of commercial vehicles on the public roads and the rights of individuals and other bodies to carry on business operating such. vehicles.

The draft Law is therefore compatible with the rights guaranteed by Article 1 of Protocol 1 to the ECHR.

**APPENDIX 2 TO REPORT****Driver and Vehicle Standards****Commercial Vehicle Operator Licensing****DRAFT - Standard Licence Conditions**

The following sets out the standard conditions that will appear on an operator's licence under the Commercial Vehicles (Licensing of Operators) (Jersey) Law 202-. These will be included in the Application Form and operators will be required to make an undertaking that they will comply with these conditions as part of the application process.

The standard conditions will be approved by the Minister for Infrastructure in advance of being formally issued.

Licence conditions:

- (1) All the Jersey Laws relating to the driving and operation of vehicles used under this licence will be observed, in particular:
  - (a) the [Road Traffic \(Jersey\) Law 1956](#);
  - (b) the [Waste Management \(Jersey\) Law 2005](#);
  - (c) the [Customs and Excise \(Jersey\) Law 1999](#).
- (2) The Inspector of Motor Traffic will be informed of all vehicles to be operated under the licence and these details will be updated by the operator within 7 days to reflect changes in the fleet.
- (3) All vehicles and trailers under the licence, including hired vehicles and trailers, will be regularly maintained and kept in a roadworthy condition at all times.
- (4) Each goods vehicle and trailer operated will receive regular Periodic Safety Inspections, as identified in the 'Vehicle Safety Inspections' section of the Jersey Guide to Road Worthiness, at the intervals agreed by the Inspector of Motor Traffic.
- (5) All maintenance, including Periodic Safety Inspections, will be undertaken by technically competent persons, trained in the techniques of vehicle examination and operationally aware of the safety standards of the vehicles they examine.
- (6) Periodic Safety Inspections will include all the items covered by the Driver and Vehicle Standard's Annual Roadworthiness Inspection manual and will make reference to manufacturers' recommended criteria to ensure that each item covered is inspected properly.
- (7) Where maintenance and/or Periodic Safety Inspections are undertaken within the business, maintenance facilities will be appropriate for the job and will comply with all the requirements identified in the 'Periodic Safety Inspection Facilities' section of the Jersey Guide to Road Worthiness.
- (8) Where maintenance and/or safety inspections are undertaken by an external provider, the provider will have adequate facilities and the work will be undertaken by technically competent persons.



- (9) Drivers will undertake daily walk around checks prior to the vehicle and/or trailer being taken on the road, to include all items identified in the 'Daily Walkaround Checks' section of the Jersey Guide to Maintaining Roadworthiness.
- (10) Drivers will report promptly in writing to a responsible person any defects or symptoms of defects identified that could prevent the safe operation of vehicles and/or trailers, this reporting will be in line with 'A system of reporting and recording defects' section of the Jersey Guide to Maintaining Roadworthiness.
- (11) All defects likely to affect the safe operation of vehicles or trailers will be recorded in writing and repaired before a vehicle or trailer is used.
- (12) Records will be kept of all daily walkabout checks, periodic safety inspections, defect and rectification forms and routine maintenance and these records will be kept for a minimum of 15 months.
- (13) When vehicles are hired, leased or borrowed by the operator, records will exist which demonstrate that appropriate maintenance and safety inspections have been taking place and drivers checks have been undertaken.
- (14) Routine maintenance will not be undertaken in a public place.
- (15) All vehicles and trailers listed on the licence will have a current and valid Annual Roadworthiness Inspection Certificate of Compliance.
- (16) No vehicle or trailer will be overloaded in excess of its permitted maximum gross weight in accordance with Article 86 of the Motor Vehicle (Construction in Use) (Jersey) Order 1998
- (17) A record will be kept of when a vehicle is taken off the road and if the vehicle is to miss a Periodic Safety Inspection or Annual Roadworthiness Inspection as a result of being off the road, this will be reported to DVS in advance.
- (18) A Transport Manager will be appointed at all times who is of good repute, is professionally competent to discharge the role and has continuous and effective responsibility for the management of the operation, including the 'key responsibilities' identified in the Operators Guide to Commercial Vehicle Operator Licensing.
- (19) Where an internal Transport Manager is responsible for more than 30 vehicles, supporting management arrangements will be in place to ensure the continuous and effective control of the fleet.
- (20) Where an external Transport Manager is contracted in, a written contract will be put in place for this, and this will be provided to the Inspector of Motor Traffic.
- (21) Where an external Transport Manager is contracted in, the external Transport Manager will not work for more than 4 operators or be responsible for a combined total of more than 50 vehicles.
- (22) All drivers will be made aware of their responsibilities under the Commercial Vehicles (Licensing of Operators) (Jersey) Law 202-.
- (23) Vehicles will be driven and operated by competent drivers with appropriate licences and records will be maintained to demonstrate this.
- (24) Any reasonable request by the Inspector of Motor Traffic to undertake an audit or inspection of the operation and any of the operational premises, whether by DVS or an external agency, will be complied with.
- (25) Any reasonable request by the Inspector of Motor Traffic to provide records regarding the operation will be complied with.

- (26) There will be at least one identified ‘operating premises’ in Jersey which is under the control of the operator and in which core business documents/records are kept, vehicles are parked when they are not in use or where activities such as safety inspections and routine maintenance are undertaken. Where these activities take place in separate locations each address will be provided to the Inspector of Motor Traffic.
- (27) The operator will ensure that operational premises complies with relevant legislation, including:
- (a) [Planning and Building \(Jersey\) Law 2002](#);
  - (b) [Building Bye-laws \(Jersey\) 2007](#);
  - (c) [Health and Safety at Work \(Jersey\) Law 1989](#);
  - (d) [Statutory Nuisances \(Jersey\) Law 1999](#);
  - (e) [Waste Management \(Jersey\) Law 2005](#).
- (28) The Inspector of Motor Traffic will be notified in writing within 7 days of any convictions relating to relevant offences of the holder of a goods vehicle licence for an offence committed in the course of the transport operation.
- (29) The Inspector of Motor Traffic will be notified in writing within 7 days and, where appropriate, will be required to provide approval of the following:
- (a) Any insolvency action (bankruptcy, liquidation, administration, voluntary arrangements, etc.) taken against the holder of a goods vehicle licence.
  - (b) The death or mental incapacity of the registered operator.
  - (c) Any change in the Transport Manager.
  - (d) Changes of Director or Partners (where applicable).
  - (e) Changes to operating premises.
  - (f) Adding or removing vehicles.
  - (g) Notification of those vehicles taken off the road.
  - (h) Changes to vehicle periodic safety inspection periods.
  - (i) Changes to maintenance arrangements.

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## EXPLANATORY NOTE

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This draft Law would require operators of goods vehicles over 3.5 tonnes to hold an operator's licence and to be of good repute and to appoint professionally competent transport managers.

*Article 1* is an interpretation provision.

*Article 2* sets out the vehicles to which the Law applies, that is any goods vehicle which is over 3.5 tonnes and a trailer, including a semi-trailer, with an unladen weight of over 1,020 kilogrammes. Such vehicles are referred to in the Law as "relevant vehicles".

*Article 3* prohibits a person from commercially using a relevant vehicle on a road without a valid operator's licence. "Commercial use" is defined in Article 1 to mean using a vehicle in connection with any trade or business (including carrying goods) or in connection with any function carried out for or on behalf of a parish or an administration of the States. Unlicensed commercial use of a relevant vehicle is a criminal offence with a maximum fine of £10,000 (level 3 on the standard scale).

*Article 4* sets out the procedure for making an application for an operator's licence to the Inspector of Motor Traffic ("Inspector") upon such fee as may be prescribed. The applicant must identify who will be the transport manager (who may not be the same person as the applicant). However, the transport manager, as defined in *Article 1*, must be an individual with continuous and effective responsibility for management of the applicant's transport business. The application must also specify the address or addresses where correspondence and records are kept; where vehicles are normally kept and where vehicles are serviced. The Inspector must grant a licence if he or she is satisfied that (a) the applicant and, if different, the transport manager, is a person of "good repute"; (b) the transport manager is "professionally competent" and (c) there are satisfactory facilities and arrangements for maintaining vehicles used in the applicant's transport business in a fit and serviceable condition. The *Schedule* sets out the criteria for "good repute" and being "professionally competent". A licence lasts for such period as determined by the Inspector up to a maximum of 5 years unless otherwise revoked under the Law or terminated at the request of the licence holder.

*Article 5* makes provision for conditions to be attached to a licence. All licences are subject to the condition that the operator pays an annual fee and subject to standard conditions determined by the Minister for Infrastructure. The Inspector can impose other conditions (including variation of standard conditions) having regard to the particular circumstances of the applicant's transport business. Breach of a condition is an offence subject to a maximum penalty of £10,000 (level 3 on the standard scale).

*Article 6* requires the Inspector to maintain a register of licence holders and sets out the information which must be included in the register and on each licence. The register and licences may be in electronic form. A list of the names of all licence holders must be published on a publicly accessible website maintained by the Government of Jersey.

*Article 7* makes provision for the variation of licences, either on the application of a licence holder or at the Inspector's volition. If the Inspector wishes to vary a licence, adequate notice must be given to allow the licence holder to make representations, however this can be suspended in particularly urgent cases. There is a right of appeal under *Article 17* if a licence holder is dissatisfied with an Inspector's refusal of a requested variation or imposition of a variation.

*Article 8* requires an applicant for an operator's licence and a licence holder to notify the Inspector of any relevant convictions occurring during the application process or

after the grant of a licence, as the case may be. Any relevant conviction (other than spent convictions) of the applicant, licence holder, proposed or appointed transport manager, employee, director, partner or agent must be notified within 7 days of the conviction or when the applicant or licence holder first becomes aware of it. A licence holder must also notify the Inspector within 7 days if the licence holder becomes bankrupt or goes into liquidation. Relevant convictions are set out in the *Schedule*. Failure to comply with the duty to notify is an offence with a maximum fine of £1,000 (level 2 on the standard scale).

*Article 9* enables an “authorised person” as defined in *Article 1*, that is, the Inspector, Deputy Inspector of Motor Traffic or a Traffic Officer appointed under the Motor Traffic (Jersey) Law 1935 or any person authorised by the Inspector for the purpose of this Law, to require a licence holder to provide documents or other information. The power must be exercised for the purpose of enabling the Inspector to determine whether the terms of a licence are complied with. The power includes power to take copies of documents and require explanations of any documents. A person who intentionally alters, suppresses or destroys any required document commits an offence and is liable to a maximum penalty of 2 years imprisonment and to an unlimited fine. A person who fails to comply with a requirement under this Article is commits an offence and is liable to a maximum 6 months’ imprisonment and a maximum fine of £10,000 (level 3 on the standard scale).

*Article 10* enables an “authorised person” to examine and seize any business document located at any operating premises and to inspect any operating premises for the purpose of determining whether the terms of a licence are complied with. “Operating premises” is defined in *Article 1* to mean any premises to which the licence holder can control access and which is used for correspondence, where records are kept, and, if applicable, where vehicles are normally kept or serviced. An authorised person can enter operating premises either with the consent of the licence holder or transport manager or, if such consent is unreasonably withheld, under a warrant issued by the Bailiff or a Jurat.

*Article 11* allows an “authorised person” to inspect any vehicle used in a licence holder’s transport business for the purpose of determining whether the terms of a licence are complied with. An inspection may take place at any “operating premises” (see *Article 10*) or any other place specified by the authorised person that is suitable for inspecting the vehicle.

*Article 12* makes it an offence for a person to (a) obstruct an authorised person in the exercise of his or her powers under *Article 10 or 11* or (b) fail to bring a vehicle to a place specified under *Article 11*. The offence is subject to a maximum term of imprisonment for 6 months and to a maximum fine of £10,000 (level 3 on the standard scale). Under *Article 12*, it is also an offence for a person intentionally to alter, suppress or destroy any document which must be provided under *Article 10*. The offence is subject to a maximum term of imprisonment for 2 years and to an unlimited fine.

*Article 13* applies where the Inspector reasonably believes that a person is using a relevant vehicle without an operator’s licence in breach of *Article 3* or that use of a vehicle under a licence is likely to be a source of danger to the public. In such circumstances a traffic officer or police officer may serve a notice requiring such use to cease immediately. If a person on whom a notice is served does not ensure it is complied with, the Inspector may apply for a court order to ensure compliance. A person who obstructs a traffic officer or police officer in the exercise of his or her powers under this Article commits an offence and is liable to a maximum term of imprisonment of 6 months or to a maximum fine of £10,000 (level 3 on the standard scale).

*Article 14* sets out the grounds on which the Inspector may suspend or revoke an operator’s licence. These include where the Inspector is satisfied that the licence holder

or transport manager is no longer a person of “good repute” or “professionally competent”, as the case may be. Other grounds include breach of condition, making false statements and persistent failure to maintain vehicles in a good and serviceable condition.

*Article 15* makes provision for further action which the Inspector may take if a licence is revoked under *Article 14*. The Inspector may disqualify the licence holder from holding a licence either indefinitely or for a specified period. If the licence holder is a company, the Inspector may also direct that any director of the company or a director of its subsidiary, or any person holding 51% or more of the share capital in the company or such an interest in its subsidiary, is similarly disqualified. The Inspector may make a similar direction against a partner of the disqualified licence holder.

*Article 16* enables the Inspector to take action against a transport manager if the Inspector considers that the transport manager is not of good repute, is not professionally competent or has breached any undertakings. In such circumstances the Inspector may disqualify the person from being a transport manager for such periods as the Inspector thinks fit and from being a transport manager generally for other transport business or specified transport businesses.

*Article 17* sets out the rights of appeal against a decision of the Inspector under *Articles 5 (licence conditions); 7 (variation of operators’ licences), 13 (cessation of unauthorised activity), 14 (revocation or suspension of a licence), 15 and 16 (disqualifications and directions)*. An appeal may be made on any matter of fact or law to the President of the Law Society of Jersey. The President must keep a list of practising lawyers who are members of the Law Society and who are willing to be invited to form a body to determine an appeal. Upon receiving notification of an appeal, the President must appoint 3 such lawyers to form an “Appeal Body”. However, if 3 individuals are not available from the list to form an Appeal Body, the President may be a member of the Appeal Body and in any event the number of members of the Appeal Body cannot be fewer than 2 individuals. Where an Appeal Body has only 2 members, the President must determine which member must make a final determination in the event of disagreement between the members. The Appeal Body can vary, substitute, uphold or rescind the Inspector’s decision. If the appellant is dissatisfied with the Appeal Body’s decision, the appellant can appeal to the Royal Court against the decision on any matter of fact or law. The Royal Court has the same powers as the Appeal Body and can, in addition, make such other order as it thinks fit.

*Article 18* sets out offences relating to forgery of certain documents including forging an operator’s licence. Such offences carry a penalty of a maximum term of imprisonment of 2 years and an unlimited fine. *Article 18* also sets out offences relating to the making of false statements and the withholding of material information. Such offences also carry a penalty of a maximum term of imprisonment of 2 years and an unlimited fine.

*Article 19* makes provision for when a licence holder dies, lacks capacity to carry on his or her transport business or becomes bankrupt or insolvent. The Inspector may direct that another person is treated as the licence holder for a maximum period of 12 months, or, in special circumstances, 18 months.

*Article 20* makes provision for the relevant vehicles of subsidiaries of a holding body to be included in the licence of the holding body and for the Inspector to take action against such subsidiaries under *Article 14*.

*Article 21* makes provision for when a director, partner, manager, secretary or equivalent person commits an offence under this Law in circumstances where an

offence under this Law is committed by a corporate or unincorporated body or by a partnership.

*Article 22* is a standard provision relating to how the Regulation and Order making powers in the Law may be exercised.

*Article 23* enables the Minister for Infrastructure to issue general guidance to the Inspector with regard to the exercise of the Inspector's functions under this Law. The guidance must be published on a publicly accessible web-site maintained by the Government of Jersey.

*Article 24* makes transitional provision so that a person does not commit an offence of using a relevant vehicle for the purposes of a transport business without an operator's licence in breach of *Article 3* if, within 3 months of the date that Article comes into force, the person carrying on the transport business has applied for a licence. The exemption continues until such time as a licence is granted.

*Article 25* sets out the title of the Law and provides for it to come into force on a day to be specified by the Minister for Infrastructure by Order.



Jersey

## DRAFT COMMERCIAL VEHICLES (LICENSING OF OPERATORS) (JERSEY) LAW 202-

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Jersey

## DRAFT COMMERCIAL VEHICLES (LICENSING OF OPERATORS) (JERSEY) LAW 202-

**A LAW** to make provision for licensing operators of specified commercial vehicles and related purposes.

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<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

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### 1 Interpretation

(1) In this Law –

“administration of the States” means –

- (a) any Minister;
- (b) a department established on behalf of the States; or
- (c) a body, office or unit of administration, established on behalf of the States (including under an enactment);

“authorised person” means a traffic officer or any other person, whether or not a States employee, authorised by the Inspector for the purposes of this Law;

“business document”, in relation to a licence holder, means any document or record in any form which relates to the licence holder’s transport business;

“commercial use” in relation to a relevant vehicle, means use of the vehicle on a road by a person –

- (a) in the course of any trade or business; or
- (b) carrying out any function for or on behalf of a parish or an administration of the States;

“function” includes a power or a duty whether or not exercised under a statutory provision;

“goods vehicle” means a motor vehicle, other than a passenger vehicle, constructed or adapted for the carriage or haulage of goods or load of any description including live animals;

“Inspector” means the Inspector of Motor Traffic appointed under Article 2 of the [Motor Traffic \(Jersey\) Law 1935](#);

“licence holder” means a person who holds an operator’s licence;

“Minister” means the Minister for Infrastructure;

“motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads;

“operating premises”, in relation to a licence holder, means any premises –

- (a) to which the licence holder can control access; and
- (b) which are at an address referred to in Article 4(4) and specified as “operating premises” in a licence under Article 6(2)(b);

“operator’s licence” means a licence granted under Article 4(6);

“passenger vehicle” means a motor vehicle which is constructed solely to carry passengers and their personal belongings;

“prescribe” means prescribe by Order;

“relevant conviction” means a conviction specified in paragraph 1(2) of the Schedule;

“relevant offence” means an offence specified in paragraph 1(2) of the Schedule;

“relevant vehicle” has the meaning in Article 2;

“road” means a road which –

- (a) is repairable at the expense of the States or a parish; or
- (b) the States or a parish has powers to maintain;

“States’ employee” has the same meaning as in the [Employment of States of Jersey Employees \(Jersey\) Law 2005](#);

“traffic officer” means any of the following appointed under Article 2 of the [Motor Traffic \(Jersey\) Law 1935](#) –

- (a) the Inspector;
- (b) the Deputy Inspector of Motor Traffic; or
- (c) a Traffic Officer;

“transport business” means a business which involves the commercial use of relevant vehicles;

“transport manager”, in relation to the transport business of any person, means the individual who has continuous and effective responsibility for the management of that business in so far as it relates to the commercial use of relevant vehicles under an operator’s licence.

- (2) The States may, by Regulations, amend this Article.

## 2 Meaning of “relevant vehicle”

- (1) In this Law a “relevant vehicle” is either of the following –
  - (a) a goods vehicle with a maximum gross weight exceeding 3.5 tonnes;

- (b) a trailer, including a semi-trailer, the unladen weight of which exceeds 1,020 kilogrammes.
- (2) In paragraph (1) –
  - (a) “maximum gross weight” means the weight of the vehicle laden with the heaviest load which it is constructed or adapted to carry;
  - (b) “semi-trailer” means a trailer attached to an articulated goods vehicle, that is a motor vehicle which is so constructed that a trailer designed to carry goods may by partial superimposition be attached to it in such manner as to cause a substantial part of the weight of the trailer to be borne by the motor vehicle;
  - (c) “unladen weight” means any weight of a trailer inclusive of the body and all parts (the heavier being taken where alternative bodies or parts are used) which are necessary to or ordinarily used with the trailer when working on a road, but exclusive of loose tools and loose equipment.
- (3) Subject to paragraph (3), the States may, by Regulations, amend this Article so as to –
  - (a) change the description of vehicle to which this Law applies, including adding new descriptions of vehicle; and
  - (b) make such other amendments to this Law as are necessary or expedient resulting from any such change.

### **3 Requirement to hold an operator’s licence**

- (1) Subject to paragraphs (2) and (3), a person must not commercially use a relevant vehicle on a road.
- (2) The prohibition in paragraph (1) does not apply if the person uses the vehicle under an operator’s licence which is in force at the time of use.
- (3) Paragraph (1) does not apply to a person using –
  - (a) an agricultural tractor; or
  - (b) a vehicle of a prescribed description.
- (4) A person who uses a vehicle in breach of paragraph (1) commits an offence and is liable to a fine of level 3 on the standard scale.
- (5) For the purposes of paragraph (2), a person uses a vehicle under an operator’s licence if the person is specified in the licence either individually or by description, which may be general or particular, and –
  - (a) the vehicle is specified in the licence by its make, model and registration number; or
  - (b) the vehicle is in the lawful possession of the person and the total period for which the vehicle is in use by persons specified or described in the licence does not exceed 7 days, regardless of how many such persons use it during that period.
- (6) The Minister may, by Order, amend the period specified in paragraph (5)(b).
- (7) For the purposes of paragraph (3) –
  - “agricultural tractor” means a motor tractor which –

- (a) is designed and used primarily for work in connection with agriculture;
- (b) is driven on a road only when proceeding to and from the site of such work; and
- (c) when so driven hauls nothing more than land implements or a trailer used for agricultural purposes;

“motor tractor” means a mechanically propelled vehicle which is not constructed itself to carry any load, other than water, fuel, accumulators and other equipment used for the purpose of propulsion, loose tools and loose equipment and the weight of which unladen does not exceed 7370 kilogrammes.

#### **4 Application and grant of operators’ licences**

- (1) A person may make an application for an operator’s licence to the Inspector in accordance with this Article.
- (2) An application must –
  - (a) be in such form as the Inspector may from time to time determine;
  - (b) include such information and documents as the Inspector may require relating to the applicant and the applicant’s transport business and verified in such manner as the Inspector may require; and
  - (c) be accompanied by such fee as may be prescribed.
- (3) The application must include –
  - (a) the name of the proposed transport manager; and
  - (b) any information that the Inspector reasonably requires to enable the Inspector to determine the application, including –
    - (i) any undertakings or declarations by the applicant or the proposed transport manager relating to the applicant’s transport business, and
    - (ii) any undertakings or declarations by the proposed transport manager relating to the matters referred to in paragraph (5)(a) to (d).
- (4) Without prejudice to the generality of the paragraphs (2) and (3), the application must include an address (which may be more than one) –
  - (a) for sending correspondence relating to the applicant’s transport business;
  - (b) where records relating to the transport business are kept;
  - (c) where vehicles used in connection with the transport business are normally kept; and
  - (d) where maintenance of those vehicles is undertaken to ensure that they are used in a fit and serviceable condition.
- (5) Without prejudice to the generality of paragraphs (2) and (3), information, undertakings and declarations required under those paragraphs may include declarations and undertakings by the proposed transport manager relating to the following matters –

- (a) the duties and responsibilities of the transport manager;
  - (b) the maximum number of vehicles under the transport manager's management, whether under one or more licences granted under paragraph (6);
  - (c) the maximum number of licence holders whose transport businesses the transport manager is permitted to manage; and
  - (d) any other matter which appears relevant to the Inspector.
- (6) The Inspector must grant an operator's licence to an applicant if satisfied that –
- (a) the application is made in accordance with this Article;
  - (b) the applicant and, if not the same person, the proposed transport manager, is of good repute as determined in accordance with the Schedule;
  - (c) the proposed transport manager (whether or not the same person as the applicant) is professionally competent as determined in accordance with the Schedule; and
  - (d) having regard to the scale and size of the applicant's transport business, there are satisfactory facilities and arrangements for maintaining the vehicles used for that business in a fit and serviceable condition.
- (7) If, having considered an application, the Inspector is not satisfied of the matters referred to in paragraph (6), the Inspector must refuse the application.
- (8) Subject to its revocation or termination under any provision of this Law, an operator's licence continues in force for such period as the Inspector considers appropriate and is specified in the licence, such period not exceeding 5 years.
- (9) If a licence holder requests the Inspector to terminate the holder's operator's licence, the Inspector must comply with the request subject to paragraph (10).
- (10) The Inspector may refuse to comply with the request if the Inspector is taking, or considering whether to take, action in respect of the operator's licence under Article 14.
- (11) The Minister may, by Order, amend the Schedule.

## **5 Licence conditions**

- (1) An operator's licence under Article 4 is granted subject to –
- (a) the condition that the licence holder pays such annual fee as the Minister may prescribe, such fee to be determined with reference to the number of vehicles comprised in the licence holder's transport business;
  - (b) such standard conditions as are applicable to that licence on the date that the licence is granted; and
  - (c) any other condition under paragraph (5).

- (2) Standard conditions must be approved by the Minister and may be varied by the Minister after such consultation as the Minister considers appropriate.
- (3) If standard conditions are varied under paragraph (2) following the grant of a licence –
  - (a) the varied conditions must be notified to the licence holder; and
  - (b) the licence is subject to the varied conditions (without prejudice to the Inspector’s powers of variation under Article 7).
- (4) In approving standard conditions for the purposes of this Article, different conditions may apply to different descriptions of licence with reference to such criteria as may be determined by the Minister.
- (5) The Inspector may, having regard to the particular circumstances of an applicant’s transport business, grant a licence subject to such other conditions, including any variations of standard conditions, that the Inspector thinks appropriate.
- (6) Conditions under this Article may relate to such matters as the Minister or the Inspector, as the case may be, thinks expedient, and, in particular, may relate to any of the following –
  - (a) safety checks and inspections of vehicles;
  - (b) keeping of records;
  - (c) requirements relating to the transport manager including any requirements relating to a written contract between the transport manager and the licence holder;
  - (d) requirements on drivers to report defects or suspected defects in vehicles;
  - (e) requirements relating to maintenance of vehicles in roadworthy condition, including facilities for maintenance;
  - (f) prior notification of changes to the licence holder’s transport business
  - (g) inspections by the Inspector at any operating premises;
  - (h) inspections by the Inspector of any vehicle used for the licence holder’s transport business;
  - (i) provision of records and other information to the Inspector at such times as may be required by the Inspector.
- (7) Subject to paragraph (8), if a condition attached to an operator’s licence is breached, the licence holder commits an offence and is liable to a fine of level 3 on the standard scale.
- (8) The Inspector may temporarily dispense with the requirement to comply with any condition attached to an operator’s licence if the Inspector is satisfied that compliance with the condition would be unduly onerous by reason of circumstances not foreseen when the condition was attached under this Article or varied under Article 7, as the case may be.

## **6 Register of licence holders and form of operator’s licence**

- (1) The Inspector must maintain a register of licence holders.

- (2) Each licence and each entry in the register in relation to the licence holder must specify –
  - (a) the name and address of the licence holder and, if different, the transport manager;
  - (b) the address of each operating premises which may be used under the operator's licence;
  - (c) the registration mark, make and model number of each vehicle which is specified in the licence for the purposes of allowing its use under Article 3(5)(a);
  - (d) the conditions to which the operator's licence is subject;
  - (e) any undertakings and declarations given by the licence holder and transport manager under Article 4(3) and (5);
  - (f) the date on which the operator's licence comes into force and its expiry date; and
  - (g) such other matters as the Inspector may deem appropriate.
- (3) The Inspector may determine the form, which may be electronic, of the register and each licence.
- (4) The Inspector must ensure that a list of the names of all licence holders is published on a publicly accessible website maintained by the Government of Jersey.
- (5) In paragraph (4), "licence holder" includes a person whose licence is suspended under Article 14.

## **7 Variation of operators' licences**

- (1) On the application of a licence holder and on payment of such fee as the Minister may prescribe, the Inspector may vary the licence holder's operator's licence with respect to any of the following matters so that –
  - (a) relevant vehicles are added to or deleted from the licence;
  - (b) a new place is specified in the licence as operating premises or an existing place so specified is deleted;
  - (c) any condition attached to the licence is varied or cancelled;
  - (d) any undertaking recorded in the licence is relaxed or cancelled;
  - (e) a new undertaking is given;
  - (f) any particulars in the licence are corrected.
- (2) The applicant for a variation under paragraph (1) must give the Inspector such information and in such form as the Inspector may reasonably require for the disposal of the application.
- (3) The Inspector may, of the Inspector's own volition, give notice to a licence holder of the Inspector's intention to vary a licence with respect to any of the matters referred to in paragraph (1).
- (4) Subject to paragraph (5) a notice under paragraph (3) must give the licence holder adequate opportunity to make representations with respect to the proposed variation.

- (5) Paragraph (4) does not apply where the Inspector considers that it is not practicable to give a licence holder an opportunity to make representations because the circumstances are such that the variation is urgently required.
- (6) The Inspector may, by written notice to the licence holder –
  - (a) vary a licence in such manner as the Inspector thinks fit following receipt of an application under paragraph (1) or following a notice given under paragraph (3) and, where applicable, consideration of any representations under paragraph (4); or
  - (b) refuse to vary a licence following receipt of an application under paragraph (1).
- (7) Paragraph (8) applies if the Inspector –
  - (a) refuses to vary a licence following an application under paragraph (1); or
  - (b) varies a licence following a notice given under paragraph (3) or other than as requested in an application under paragraph (1).
- (8) The Inspector must give the licence holder a statement of reasons for the decision in the notice under paragraph (6) and set out, in that notice, the person's right of appeal under Article 17.
- (9) For the avoidance of doubt, the Inspector may vary a standard condition with respect to a licence holder having regard to the particular circumstances of that licence holder.

## **8 Duty to notify convictions and bankruptcy etc**

- (1) An applicant for an operator's licence must notify the Inspector in writing if the applicant or any of the persons referred to in paragraph (2) is convicted of a relevant offence during the period between the date the application is made and the date that the application is finally determined (including any appeal).
- (2) Those persons are –
  - (a) a director (or any person in an equivalent position) or partner of the applicant where the applicant is not an individual;
  - (b) the person proposed to be engaged as the transport manager.
- (3) A licence holder must notify the Inspector in writing if the licence holder or transport manager is convicted of a relevant offence.
- (4) A licence holder must notify the Inspector in writing if an employee, office holder or other person working for the licence holder is convicted of a relevant offence committed in the course of the licence holder's transport business.
- (5) A notice given under paragraph (1), (3) or (4) must be given –
  - (a) no later than 7 days after the conviction in the case of a conviction of the licence holder or the transport manager of the licence holder; or
  - (b) no later than 7 days after the conviction has come to the licence holder's knowledge in the case of any other person.



- (6) If a licence holder becomes bankrupt or subject to any other judicial arrangements consequent upon insolvency, the licence holder must notify the Inspector within 7 days after the event.
- (7) A person who fails to comply with paragraph (1), (3), (4) or (6) is guilty of an offence and liable on conviction to a fine of level 2 on the standard scale.

## **9 Provision of documents and other information to the Inspector**

- (1) An authorised person may, by notice in writing served on a licence holder, require the licence holder to provide the authorised person at such time or at such intervals in respect of such period as may be specified in the notice, with such information or documents as the Inspector may reasonably require for the purpose of determining whether the terms of a licence, including any undertakings that form part of the licence, are complied with.
- (2) The power under paragraph (1) includes a power to require the production of documents from any person who appears to be in possession of them.
- (3) Where any person from whom production is required under paragraph (2) claims a lien on documents produced by that person, the production is without prejudice to the lien.
- (4) The power under this Article to require a licence holder or other person to produce any documents includes power –
  - (a) to take copies of documents that are produced;
  - (b) to require an explanation of any documents that are produced; and
  - (c) if the documents are not produced, to require the person who was required to produce them to state, to the best of that person's knowledge or belief, where, or in whose possession, they are.
- (5) Any person who, without reasonable excuse, fails to comply with a requirement imposed on the person under this Article commits an offence and is liable to imprisonment for a term of 6 months and to a fine of level 3 on the standard scale.
- (6) Nothing in this Article requires the disclosure or production by a person to an authorised person of information or documents which he or she would, in an action in a court, be entitled to refuse to disclose on grounds of legal professional privilege.
- (7) A person who intentionally alters, suppresses or destroys any document that has been specified in a notice under paragraph (1) commits an offence and is liable to imprisonment for a term of 2 years and to a fine.

## **10 Power to enter and inspect operating premises and examine business documents**

- (1) An authorised person may –
  - (a) enter and inspect any operating premises; and
  - (b) examine and seize any business document, including a copy of any such document, that is located at any operating premises.
- (2) The power under paragraph (1) may be exercised only for the purpose of determining whether the terms of a licence are complied with.

- (3) The power under paragraph (1) to enter any operating premises may be exercised –
  - (a) without a warrant if the licence holder or transport manager consents to such entry; or
  - (b) with a warrant issued under paragraph (5).
- (4) An authorised person may by notice require any person to produce any specified business document at the operating premises where the business document is located for the purpose of enabling the authorised person to exercise the power under paragraph (1) in relation to that document.
- (5) Following an application by the Inspector or the Attorney General supported by information given on oath, the Bailiff or a Jurat may issue a warrant authorising any authorised person to enter any premises specified in the warrant for the purpose of exercising the power under paragraph (1) if the Bailiff or Jurat is satisfied of any of the following –
  - (a) that –
    - (i) access was demanded by the authorised person at a reasonable hour and was unreasonably refused or, although entry to the premises was granted, the person in control of the premises unreasonably refused to allow the authorised person to exercise any of the powers under paragraph (1), and
    - (ii) the person in control of the premises has, after the refusal, been notified by the authorised person of the application for the warrant and has had an opportunity of being heard by the Bailiff or Jurat on the question of whether or not it should be issued;
  - (b) that the case is one of urgency and that compliance with sub-paragraph (a) would defeat the object of entry; or
  - (c) that the premises are unoccupied, or unlawfully occupied, and compliance with sub-paragraph (a) is not reasonably practicable.
- (6) An authorised person executing a warrant may use such reasonable force as may be necessary.
- (7) A warrant must be executed at a reasonable hour unless it appears to the authorised person executing it that there are grounds for suspecting that the specified business document in question would not be found if it were so executed.
- (8) If the premises in respect of which a warrant is issued are occupied and the person in control of the premises or any other person acting on that person's behalf is present when the warrant is executed, the authorised person executing it must –
  - (a) show the warrant to that person and supply that person with a copy of it; or,
  - (b) if no such person is present, leave a copy of it in a prominent place.
- (9) An authorised person seizing any document, whether or not in pursuance of a warrant, must give a receipt for it if asked to do so.
- (10) Any document seized under paragraph (1)(b) may be retained for so long as is necessary in all the circumstances but the person in control of the premises in question must be given a copy of anything that is seized if –

- (a) the person so requests; and
  - (b) the authorised person executing the warrant considers that the copy can be done without undue delay.
- (11) An authorised person must not exercise the powers under this Article in respect of any document which a person would, in an action in a court, be entitled to refuse to disclose or produce on the grounds of legal professional privilege.

## **11 Powers to inspect vehicles**

- (1) An authorised person may, at any reasonable hour, inspect any relevant vehicle used for the purposes of a licence holder's transport business for the purpose of determining whether the terms of the licence holder's licence are complied with.
- (2) An inspection under paragraph (1) may take place –
- (a) on any operating premises; or
  - (b) at such other place suitable for inspecting the vehicle as may be specified by the authorised person.
- (3) Where an inspection takes place on operating premises, an authorised person has power to enter the operating premises as if Article 10 applied, subject to any necessary modifications, and references in those paragraphs to Article 10(1) were to paragraph (2)(a) of this Article.
- (4) Where an inspection takes place at a place described in paragraph (2)(b), an authorised person may, by written notice, require a licence holder to arrange for a vehicle to be brought at any reasonable hour to that place for inspection.

## **12 Obstructing an authorised person**

- (1) A person commits an offence if, without reasonable excuse, the person –
- (a) obstructs an authorised person in the exercise of the authorised person's powers under Article 10 or 11;
  - (b) fails to provide such reasonable assistance as an authorised person may require when the authorised person is exercising his or her powers under Article 10 or 11;
  - (c) fails to bring a vehicle to such place as is required under Article 11(4).
- (2) A person who intentionally alters, suppresses or destroys any business document that has been specified in a notice under Article 10(4) commits an offence.
- (3) A person who commits an offence under paragraph (1) is liable to imprisonment for a term of 6 months and to a fine of level 3 on the standard scale.
- (4) A person who commits an offence under paragraph (2) is liable to imprisonment for a term of 2 years and to a fine.

### 13 Notices requiring cessation of unauthorised use

- (1) If the Inspector reasonably believes that a person is commercially using a vehicle in breach of Article 3, the Inspector may serve a notice requiring the immediate cessation of that use.
- (2) If the Inspector reasonably believes the commercial use of a vehicle under a licence is likely to be a source of danger to the public, the Inspector may serve a notice requiring the immediate cessation of that use.
- (3) A notice under paragraph (1) or (2) must –
  - (a) specify the vehicle (which may be more than one) to which the notice applies; and
  - (b) give reasons for the notice.
- (4) A notice under paragraph (1) may be served by a traffic officer on any person who appears to the traffic officer to be responsible for the commercial use of the vehicle.
- (5) A notice under paragraph (2) may be served by a traffic officer on the licence holder or transport manager only.
- (6) A traffic officer or police officer may, at any reasonable hour, enter any operating premises of the licence holder, or where there is no licence holder, premises where the vehicle which is the subject of the notice is kept, for the purpose of serving a notice under paragraph (1) or (2).
- (7) Any person on whom a notice is served under this Article is responsible for ensuring compliance with the notice.
- (8) The Inspector may, at any time, cancel a notice served under paragraph (1) or (2) and must notify the recipient of the notice accordingly.
- (9) A person who, without reasonable excuse, obstructs a traffic officer or police officer in the exercise of the officer's powers under paragraph (6), commits an offence and is liable to imprisonment for a term of 6 months and to a fine of level 3 on the standard scale.
- (10) If a person on whom a notice under paragraph (1) or (2) has been served does not ensure compliance with the notice as required by paragraph (7), the Inspector may apply to the Royal Court for an order requiring the person to so comply.
- (11) On an application under paragraph (10) the Royal Court may –
  - (a) make an order –
    - (i) confirming or varying the terms of the notice and requiring the person to ensure compliance with the notice within such period as the Royal Court specifies, or
    - (ii) dismissing the application; and
  - (b) make such other consequential order, including as to costs, as it thinks fit.
- (12) Before a notice is served under paragraph (1) or (2), the Inspector may apply *ex parte* to the Royal Court for an order that the notice take effect as an interim injunction.
- (13) On an application under paragraph (12) the Royal Court may grant an interim injunction on such terms as it thinks fit.

- (14) Where an interim injunction is granted, the Royal Court must order that the notice under paragraph (1) or (2) is served by the Viscount together with the interim injunction, and the order must specify the date on which the proceedings are returnable in the Royal Court.
- (15) On the hearing of the application to confirm the interim injunction, the Royal Court may –
  - (a) confirm or lift the interim injunction on such terms as it thinks fit;
  - (b) make such order relating to the notice as it is empowered to make under paragraph (11);
  - (c) dismiss the application;
  - (d) make such other consequential order, including as to costs, as it thinks fit.

#### **14 Revocation and suspension of an operator's licence**

- (1) The Inspector may, on any ground specified in paragraph (2), revoke an operator's licence or suspend an operator's licence for such period as the Inspector determines.
- (2) The grounds for action under paragraph (1) are –
  - (a) that the licence holder or transport manager no longer satisfies the requirements of Article 4(6)(b) or (c);
  - (b) that the licence holder or any person on behalf of the licence holder, including the transport manager, has made a false statement, forged any document or withheld any material information for the purpose of any of the following –
    - (i) obtaining the operator's licence,
    - (ii) obtaining a variation of the operator's licence,
    - (iii) preventing the variation of the operator's licence by the Inspector, or
    - (iv) preventing the imposition of a condition or other term of the licence;
  - (c) a condition of the licence has not been met;
  - (d) an undertaking given by the applicant or transport manager under Article 4(3) or (5) has not been complied with;
  - (e) that there has been a material change in any of the circumstances of the licence holder which is relevant to the grant of the licence;
  - (f) that the licence holder or transport manager has persistently failed to maintain the vehicles used under the operator's licence in a fit and serviceable condition;
  - (g) that the licence holder has become bankrupt or subject to any other judicial arrangements consequent upon insolvency;
  - (h) that a person in respect of whom a notification must be given under Article 8 has a relevant conviction.
- (3) Subject to paragraph (5), the Inspector must not take action under paragraph (1) unless the Inspector has given notice in accordance with paragraph (4).

- (4) The notice must state the grounds on which the Inspector is considering taking action and –
  - (a) invite the licence holder to make written representations with respect to those grounds; and
  - (b) state that any such representations must be received by the Inspector, except where paragraph (5) applies, no later than 21 days after the date of the notice or such longer period as the Inspector may allow.
- (5) In exceptional circumstances the Inspector may require representations to be received in such shorter period as is specified in the notice and must provide written reasons for the requirement in the notice.
- (6) If the Inspector decides to revoke a licence under this Article, the Inspector may direct that the revocation must not take effect for such period as appears to the Inspector to be reasonably required to enable the operations carried on under the licence to be transferred to another person authorised under an operator's licence to carry them on.
- (7) If a licence is suspended or revoked under this Article, the Inspector may, if the Inspector considers that it is in the public interest to do so, issue a public statement giving notice of the suspension or revocation and the reasons for it.
- (8) A statement must not be issued under paragraph (7) unless any appeal against the decision to revoke or suspend has been finally determined or the period for making an appeal has expired.

## **15 Further action including disqualification following revocation of licence**

- (1) Where under Article 14, the Inspector revokes an operator's licence, the Inspector may by written notice disqualify the licence holder from holding or obtaining an operator's licence either indefinitely or for such period as the Inspector thinks fit.
- (2) If a person applies for or obtains an operator's licence whilst disqualified under paragraph (1), the person commits an offence and is liable on conviction to a fine of level 3 on the standard scale.
- (3) Any registration made in respect of a person disqualified under paragraph (1) or a licence issued to that person is void.
- (4) Where the Inspector disqualifies a person under paragraph (1) ("disqualified person"), the Inspector may direct that at any time or during such period as the Inspector may specify, either or both of the following is liable to action under Article 14 –
  - (a) a company which holds an operator's licence ("licensed company") if –
    - (i) the disqualified person is a director of the company or holds a controlling interest in the licensed company, or
    - (ii) the disqualified person is a director of a company or holds a controlling interest in a company ("company A") and the licensed company is a subsidiary of company A;
  - (b) a person who –
    - (i) holds an operator's licence, and

- (ii) commercially uses relevant vehicles in partnership with the disqualified person.
- (5) The powers conferred by paragraphs (1) and (4) in relation to a person who is or was a licence holder may be exercised also –
  - (a) where the licence holder was a company, in relation to any director of that company; and
  - (b) where the licence holder used relevant vehicles in partnership with other persons, in relation to any of those other persons.
- (6) References in paragraphs (2), (3) and (7) to paragraph (1) or (4) include a reference to that paragraph as it applies by virtue of paragraph (5).
- (7) The Inspector may at any time –
  - (a) cancel a disqualification under paragraph (1);
  - (b) cancel any direction given under paragraph (4);
  - (c) vary the disqualification under paragraph (1) or any direction under paragraph (4).
- (8) In this Article –
  - (a) “controlling interest” means 51% or more of the ordinary share capital of a company;
  - (b) “subsidiary” has the same meaning as in Article 2 of the [Companies \(Jersey\) Law 1991](#).

## 16 Action relating to transport manager

- (1) This Article applies if the Inspector considers that a transport manager –
  - (a) is not a person of good repute;
  - (b) is not professionally competent;
  - (c) has breached any undertaking given by the transport manager for the purposes of obtaining a licence or a variation of a licence.
- (2) Where this Article applies, the Inspector may by written notice disqualify the transport manager from acting as a transport manager –
  - (a) indefinitely or for such period as the Inspector thinks fit; and
  - (b) in respect of transport businesses generally or transport businesses operated by one or more named persons.
- (3) The Inspector must not take action under paragraph (2) unless the Inspector has given notice to the transport manager in accordance with paragraph (4).
- (4) The notice must state the grounds on which the Inspector is considering disqualification and –
  - (a) invite the transport manager to make written representations with respect to those grounds;
  - (b) state that any such representations must be received by the Inspector no later than 21 days after the date of the notice, or such longer period as the Inspector may allow.
- (5) The Schedule applies for the purposes of paragraph (1)(a) and (b).
- (6) As long as a person is disqualified under paragraph (1), that person must not be named as the transport manager in a licence under Article 6.

- (7) If a person acts as a transport manager in contravention of a notice under paragraph (1), the person commits an offence and is liable on conviction to a fine of level 3 on the standard scale.
- (8) The Inspector may at any time cancel or vary a disqualification under paragraph (1).

## 17 Appeals

- (1) In this Article –
  - (a) “Appeal Body” means the persons appointed under paragraph (6) and, if applicable, the President of the Law Society under paragraph (7);
  - (b) “decision” means any of the following –
    - (i) the refusal of an application for an operator’s licence under Article 4(7),
    - (ii) the imposition of a condition under Article 5(5),
    - (iii) the refusal of an application to vary an operator’s licence under Article 7(7)(a),
    - (iv) the variation of a licence under Article 7(7)(b),
    - (v) a notice requiring cessation of unauthorised use under Article 13,
    - (vi) a revocation or suspension of a licence under Article 14,
    - (vii) a disqualification or direction under Article 15,
    - (viii) a disqualification of a transport manager under Article 16;
  - (c) “Law Society” means the Law Society of Jersey;
  - (d) “ordinary member” has the meaning given in the Law Society’s Bye-Laws.
- (2) A decision must include written reasons for the decision.
- (3) A person who dissatisfied with a decision may appeal to the President of the Law Society against the decision within 21 days of the date of the decision or within such longer period as the President of the Law Society may allow.
- (4) An appeal under paragraph (3) must –
  - (a) state the reasons for the appeal having regard to any matter of fact or law;
  - (b) be copied to the Inspector and to the Minister.
- (5) Following receipt of the appeal under paragraph (4), the President of the Law Society must, as soon as reasonably practicable and subject to paragraph (7), appoint 3 individuals from the list referred to in paragraph (6) to determine the appeal.
- (6) The President of the Law Society of Jersey must keep a list of the names of ordinary members who are willing to be invited to be a member of an Appeal Body.
- (7) If 3 individuals are not available to form an Appeal Body from the list kept under paragraph (6) –



- (a) the President of the Law Society may be a member of the Appeal Body;
  - (b) there must be no fewer than 2 members of the Appeal Body;
  - (c) if there are only 2 members of the Appeal Body, the President of the Law Society must decide which member must make a final determination in deciding the appeal in the event of a disagreement between the members.
- (8) The Appeal Body may follow such procedure as it thinks appropriate for determining the appeal, including deciding to what extent to give any person affected by the decision the opportunity to make representations, but must, in any event, give the appellant adequate opportunity to make representations.
- (9) The members of the Appeal Body must receive such remuneration and expenses as the Minister, after consultation with the President of the Law Society, determines is appropriate and has been notified to the President prior to the appointment of an Appeal Body.
- (10) In determining an appeal, the Appeal Body may –
  - (a) vary or substitute the decision;
  - (b) uphold the decision; or
  - (c) rescind the decision.
- (11) The Appeal Body must notify the appellant and the Inspector of its determination under paragraph (10) and the reasons for it and the Minister must ensure that the determination is published on a publicly accessible website maintained by the Government of Jersey.
- (12) Subject to paragraph (14), the appellant and Inspector must comply with any determination made by the Appeal Body.
- (13) Following a notification under paragraph (11), the appellant may, within 21 days of the date of that notification, appeal to the Royal Court against that determination on any matter of fact or law.
- (14) In determining an appeal under paragraph (13), the Royal Court may –
  - (a) vary or substitute the Appeal Body's determination;
  - (b) uphold the Appeal Body's determination;
  - (c) rescind the Appeal Body's determination; or
  - (d) make such other order as the Royal Court thinks fit.
- (15) An appeal under paragraph (3) or (13) does not have the effect of suspending the decision which is the subject of the appeal subject to any Order (whether interim or otherwise) by the Royal Court on application by the appellant to the Royal Court.
- (16) An application under paragraph (15) may be made at any time by the appellant following an appeal under paragraph (3) or (13).
- (17) The power to make Rules of Court under Article 13 of the [Royal Court \(Jersey\) Law 1948](#) includes power to make rules of court for the purpose of this Article.
- (18) The States may, by Regulations, amend this Article.

## 18 Offences relating to forgery and false statements

- (1) This Article applies to –
  - (a) an operator’s licence;
  - (b) any document or other thing evidencing the authorisation of any person for any purpose of this Law;
  - (c) a certificate of competence, diploma or other qualification referred to in paragraph 2(3) of the Schedule.
- (2) In this Article “forge” means to make a false document or other thing to which this Article applies in order that it may be used as genuine.
- (3) A person must not do any of the following with intent to deceive –
  - (a) forge, alter or use a document or other thing to which this Article applies;
  - (b) lend to, or allow to be used by, any other person a document or other thing to which this Article applies;
  - (c) make or have in his or her possession any document or other thing so closely resembling a document or other thing to which this Article applies as to be calculated to deceive.
- (4) A person who contravenes paragraph (3) commits an offence and is liable to imprisonment for a term of 2 years and a fine.
- (5) A person must not knowingly make a false statement, or withhold any material information, for the purpose of any of the following –
  - (a) obtaining an operator’s licence for the person or any other person;
  - (b) obtaining the variation of an operator’s licence;
  - (c) preventing the issue or variation of an operator’s licence;
  - (d) preventing or procuring the imposition of a condition or other term of a licence.
- (6) A person who contravenes paragraph (5) commits an offence and is liable to imprisonment for a term of 2 years and a fine.

## 19 Transfer of licences on death, transfer of business etc.

- (1) This Article applies if a licence holder –
  - (a) dies;
  - (b) lacks capacity within the meaning of Article 4 of the [Capacity and Self-Determination \(Jersey\) Law 2016](#) to carry on his or her transport business;
  - (c) becomes bankrupt or subject to any other judicial arrangement consequent upon insolvency.
- (2) In a case referred to in paragraph (1)(a) or (b), the Inspector may direct that the operator’s licence is to be treated as suspended until the date on which a direction under paragraph (3) comes into force.
- (3) In any case referred to in paragraph (1), the Inspector may direct that a person carrying on the licence holder’s transport business is treated as if that person were the licence holder for such purpose and extent as is specified in the direction.

- (4) A direction under paragraph (3) may remain in force for such maximum period as the Inspector specifies, not exceeding 12 months, or if the Inspector is satisfied that there are special circumstances, not exceeding 18 months.
- (5) A person who is treated as if the person were a licence holder under paragraph (3), is treated for the purposes of this Law as if the person were in lawful possession of any vehicle that was in the lawful possession of the licence holder.

## **20 Holding companies, subsidiaries and other bodies**

- (1) In this Article, “subsidiary” and “holding body” have the same meaning as in Article 2 of the [Companies \(Jersey\) Law 1991](#).
- (2) A body corporate which is a holding body may apply to the Inspector under Article 4 or 7 for a licence to include relevant vehicles in the lawful possession of any of its subsidiaries.
- (3) In determining whether to grant such an application the Inspector must be satisfied that –
  - (a) any subsidiary in question is under the effective management and control of the applicant;
  - (b) it is reasonable to treat the business of any such subsidiary as part of the business of the applicant; and
  - (c) that the subsidiary is of good repute and meets the requirements of professional competence as determined in accordance with the Schedule.
- (4) Any conditions imposed under Article 5 or 7 may require compliance by the subsidiary in question.
- (5) In considering whether to take action under Article 14, the Inspector may do any of the following –
  - (a) take action, either jointly or separately, with respect to the licence holder and any subsidiary in question;
  - (b) revoke the licence and require it be replaced by separate licences.
- (6) The States may by Regulations amend this Article to make such provision as they think fit with respect to the application and grant of operators’ licences to any entity, of whatever character, which is not an individual or a body corporate, including any group of persons which is registered as any form of partnership under any enactment.

## **21 Liability relating to offences**

- (1) This Article applies where an offence under this Law is committed by a body corporate, a partnership however constituted or any other unincorporated body and is proved to have been committed with the consent or connivance of a person mentioned in paragraph (2).
- (2) The persons to whom paragraph (1) refers are –
  - (a) in the case of a body corporate, a person who is a director, manager, secretary or other similar officer of the body corporate;

- (b) in the case of a partnership –
    - (i) a partner, except where (ii) applies,
    - (ii) if the partnership has general partners –
      - (A) a general partner, or
      - (B) a limited partner who is participating in the management of the partnership;
  - (c) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of a committee or other similar governing body; or
  - (d) any person purporting to act in any capacity described in sub-paragraph (a), (b) or (c).
- (3) The person described in paragraph (2)(a), (b), (c) or (d), as the case may be, commits an offence and is liable in the same manner as the body corporate, partnership or other unincorporated body to the penalty provided for that offence.
- (4) If the affairs of a body corporate are managed by its members, paragraphs (1) to (3) apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.
- (5) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence must, without prejudice to paragraphs (1) to (3), be brought in the name of the body and not the name of any of its members.

## **22 Regulations and Orders**

- (1) The Minister may by Order prescribe any matter that must or may be prescribed under this Law.
- (2) Any Regulations or Order under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the States or the Minister, as the case requires, to be necessary or expedient for the purposes of the Regulations or Order.

## **23 Guidance**

- (1) The Minister may issue general guidance to the Inspector regarding the exercise of the Inspector's functions under this Law.
- (2) The Inspector must have regard to any general guidance issued under paragraph (1) when exercising any function under this Law.
- (3) Any general guidance issued under paragraph (1) must be published by the Minister on a publicly accessible website maintained by the Government of Jersey.

## **24 Transitional provisions**

- (1) Notwithstanding Article 3 (requirement to hold an operator's licence), a person who carried on a transport business immediately before Article 3

comes into force (“the commencement day”) is not taken to have committed any offence under that Article by virtue of anything done by the person in the course of that person’s transport business during the period starting on the commencement day and ending on whichever is the latest of the following –

- (a) the date that is 3 months after that day; or
  - (b) provided the person applied for an operator’s licence no later than 3 months after the commencement day –
    - (i) the date that an application for an operator’s licence under Article 4 is finally determined (including following an appeal under Article 17), or
    - (ii) the date that the application is withdrawn.
- (2) A person is not taken to have committed an offence under Article 3 if the person commercially uses a relevant vehicle for the purposes of a transport business carried on by a person who, at the time of the use, is not taken to have committed an offence under paragraph (1).
- (3) The Minister may by Order make such transitional provision as the Minister thinks fit consequential upon or incidental to the coming into force of any provision of this Law.

## **25 Citation and commencement**

This Law may be cited as the Commercial Vehicles (Licensing of Operators) (Jersey) Law 202- and comes into force on a day to be specified by the Minister by Order.

## SCHEDULE

(Article 4)

### QUALIFICATIONS FOR LICENCE HOLDERS AND TRANSPORT MANAGERS

#### 1 Good Repute

- (1) In determining whether a person who is an applicant for a licence, a licence holder and, if different the transport manager or proposed transport manager, is of good repute, the Inspector may have regard to any matter but must have regard to –
  - (a) any relevant convictions of the person;
  - (b) in the case of a licence holder, any relevant convictions of any employee, office holder or other person working for the licence holder;
  - (c) in the case of an applicant who is not an individual, any relevant convictions of a director (or any person in an equivalent position) or partner;
  - (d) any information which appears to the Inspector to relate to a person's fitness to hold a licence including the previous conduct of an employee or office holder or other person working for the person.
- (2) For the purposes of this paragraph, a relevant conviction is a conviction of any of the following offences –
  - (a) an offence relating to or involving the use of a relevant vehicle under –
    - (i) the [Road Traffic \(Jersey\) Law 1956](#),
    - (ii) this Law,
    - (iii) Article 23 of the [Waste Management \(Jersey\) Law 2005](#) (prohibition of unlicensed or harmful activities involving waste),
    - (iv) Article 38 of the [Waste Management \(Jersey\) Law 2005](#) (prohibition of movements of hazardous or health care waste by carriers who are not registered),
    - (v) Article 42(1) of the [Customs and Excise \(Jersey\) Law 1999](#) relating to a prohibition under paragraph 8 (using or supplying marked or coloured hydrocarbon oil) of the Schedule to the [Excise Duty \(Relief and Drawback\) \(Jersey\) Order 2000](#),
    - (vi) the law of any country or territory outside Jersey which is equivalent to an offence referred to in sub-clause (i) to (v);
  - (b) an offence (whether or not under the law of Jersey) for which the person was punished with either or both of the following –
    - (i) a sentence of imprisonment, including any form of custodial sentence, for a term exceeding 3 months,
    - (ii) a fine or any equivalent financial penalty, exceeding £1,000;

- (c) any other offence which is prescribed.
- (3) For the purposes of this paragraph –
  - (a) convictions which are spent under the [Rehabilitation of Offenders \(Jersey\) Law 2001](#) must be disregarded; and
  - (b) the Inspector may also disregard an offence if such time as the Inspector thinks appropriate has elapsed since the date of the conviction.

## 2 Professional competence

- (1) In this paragraph, references to “the requirement of professional competence” are references to the requirement in this Law that a transport manager must be professionally competent.
- (2) A requirement in this Law for a transport manager to be professionally competent must be satisfied by an individual.
- (3) An individual is professionally competent if, and only if –
  - (a) the individual has passed a written examination organised by an approved body and is the holder of a certificate to that effect issued by that body;
  - (b) the individual is the holder of any other certificate of competence, diploma or other qualification recognised for the purpose of this paragraph by the Inspector; or
  - (c) the individual satisfies the Inspector that the individual has sufficient experience and skills that are appropriate for the transport business or businesses managed by the individual.
- (4) In sub-paragraph (3), “approved body” means a body approved by the Inspector for the purposes of that sub-paragraph.