

Commercial Vehicle Roadworthiness Testing System

Complying with RSA Fit and Proper Person requirements

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Purpose of Document

The purpose of this document is to outline the Road Safety Authority's (RSA) policy on determining whether a person is a fit and proper person to hold an authorisation as a CVR test operator or CVR tester.

This document does not purport to be a legal interpretation of the applicable provisions, is by way of information and guidance only and, in the event of any inconsistency, the terms of the Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012 prevails.

1. Overview of Fit and Proper Requirements

Section 12 of the Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012 (the "Act of 2012") establishes a "fit and proper" regime and this represents an important part of the CVR test operator and CVR tester authorisation arrangements being implemented by the RSA. In implementing this regime, the RSA will seek not to place an unreasonable administrative burden on CVR test operators or CVR testers (and the RSA is to act within the parameters of the Act of 2012). In determining whether a person is a fit and proper person to hold an authorisation, the guiding principle for the RSA is to act reasonably in making a decision on the basis of the information available to it. It is possible that a minority of applicants and authorisation holders may not be regarded as fit and proper persons and in such circumstances, their applications will be refused or authorisations suspended or revoked, as the case may be.

The fit and proper person requirements are one aspect of the new legislative framework that is designed to ensure that the key personnel involved with the testing of CVR vehicles have the skills and characteristics necessary to ensure the delivery of high quality services and outcomes for CVR vehicle owners as well as wider public safety considerations.

The fit and proper regime is part of a framework that

- a) seeks to ensure that only persons who are fit and proper persons are permitted to conduct CVR testing; and
- b) seeks to promote confidence amongst CVR vehicle owners and the public generally.

2. How can CVR test operators ensure they meet the Fit and Proper Requirements?

CVR test operators should take appropriate measures and precautions to ensure that they are fit and proper persons to hold CVR test operator authorisations. In the case of a CVR test operator that is a company, such CVR test operator must take appropriate measures and precautions to ensure that each director and the company secretary is a fit and proper person to hold a CVR authorisation.

There may be circumstances where a person assessed as being fit and proper is unable to carry out his/her role and a replacement needs to be appointed at short notice.

The RSA requires that CVR test operators must notify the Authority about changes in directors or the company secretary; if the RSA determines that the newly appointed director or company secretary is not a fit and proper person, the RSA may suspend or revoke the authorisation unless a suitable replacement is appointed. For the purpose of collecting information for assessment, and bearing in mind the fit and proper requirements specified in the Act, the RSA recommends as best practice that CVR test operators require the submission of:-

- (a) a questionnaire to be filled in by each individual who will be subject to the fit and proper person assessment concerning the convictions specified in Section 12 of the Act;
- (b) a curriculum vitae indicating the qualifications of the individual as well as previous and current positions of the person concerned (optional); and
- (c) a declaration that the person has not been convicted of any of the offences specified in section 12 of the Act of 2012.

CVR test operators should also put in place measures to ensure that CVR testers employed or engaged by him or her are fit and proper persons to hold a CVR tester authorisation. The CVR tester concerned should be made aware of the consequences of not being a fit and proper person and the possible implications of withholding information or giving information knowing it to be false or misleading. If a person fails to notify the RSA of a conviction for an offence specified in section 12 of the Act of 2012, or gives information to the RSA knowing it to be false or misleading, that person commits an offence. In addition, the RSA may refuse his or her application for authorisation or, in the case of a holder of an authorisation, suspend or revoke such authorisation.

3. Application of Fit and Proper Requirements

Section 11 of the Act of 2012 provides that the Authority shall not authorise a person as a CVR test operator under section 9 of the Act of 2012, amend an authorisation under section 14 of the Act of 2012, or renew an authorisation under 15 of the Act of 2012 unless the RSA is satisfied that, having regard to section 12 of the Act of 2012, the person is a fit and proper person to hold such an authorisation. In addition, section 17 of the Act of 2012 provides that the RSA may authorise a

person to be a CVR tester where the person is, having regard to section 12 of the Act of 2012, a fit and proper person to be so authorised.

'Fit and proper' is not defined in the Act; however, section 12 of the Act of 2012 requires applicants and authorisation holders to notify the RSA if they have been convicted of one or more of the following offences:

- a) Murder
- b) Manslaughter
- c) A drug trafficking offence (within the meaning of section 3 of the Criminal Justice Act 1994)
- d) An offence under the Non-Fatal Offences against the Person Act 1997
- e) An offence under section 2 of the Illegal Immigrants (Trafficking) Act 2000
- f) A sexual offence (within the meaning of section 3 of the Sex Offenders Act 2001)
- g) An offence under the Criminal Justice (Theft and Fraud Offences) Act 2001
- h) An offence under the Criminal Law (Human Trafficking) Act 2008
- i) An offence relating to money laundering under Part 2 of the Criminal Justice (Money Laundering & Terrorist Financing) Act 2010
- j) An offence under the Firearms Acts 1925 to 2009
- k) An offence under the Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012
- l) An offence relating to the fitting of a tachograph manipulation device or the improper use of a tachograph calibration certificate under the European Communities (Road Transport) (Working Conditions and Road Safety) Regulations 2008 (S.I. No 62 of 2008)
- m) An offence consisting of attempting or conspiring to commit, or aiding, abetting, counselling, soliciting, procuring or inciting the commission of any offence mentioned in paragraphs (a) to (l)

- n) An offence under the law of another jurisdiction which corresponds to an offence mentioned in paragraphs (a) to (m), where the conduct constituting the offence under the law of that other jurisdiction would, if committed in the State, constitute an offence referred to in any of those paragraphs.

Accordingly, in determining whether a person is a fit and proper person to hold an authorisation, the RSA will have regard to the convictions notified to it by that person in accordance with section 12 of the Act of 2012.

4. To whom does the fit and proper person assessment apply?

The Fit and Proper assessment is applicable to any person:

- a) who holds an authorisation as a CVR tester or CVR test operator, or in the case of an authorisation held by a company, each director and the secretary of that company or in the case of an unincorporated association, each partner or member in such an unincorporated association.
- b) who is an applicant seeking an authorisation as a CVR tester or CVR test operator, or in the case of an authorisation applied for by a company, each director and the secretary of that company or in the case of an unincorporated association, each member or partner in such an unincorporated association. .

5. Notification requirements in relation to certain offences

An applicant for, or the holder of, a CVR authorisation or, in the case of a CVR authorisation applied for by a company or unincorporated association, each director and the secretary of that

company or the partners of committee of management if an unincorporated association, shall notify the Authority if he or she has been convicted of any of the specified offences listed in section 3 above.

The holder of a CVR test operator or CVR tester authorisation must notify the RSA if he or she has been convicted of one of the offences specified in section 12 of the 2012 Act as follows:

- within three months of the passing of the Act; or
- within 28 days of the expiry time allowed for appealing such conviction or of the determination or withdrawal of the appeal of such conviction whichever is the latest.

A notification form to assist CVR test operators and CVR testers to make the required notification is available on the CVRT website – www.cvrt.ie.

6. New Applications for authorisation

As mentioned above, all new applicants for CVR test operator or CVR tester authorisation will be required to declare whether or not they have been convicted of any of the offences specified in section 12 of the Act of 2012.

Where a person fails to notify the RSA in accordance with Section 12 of the Act or gives false or misleading information, the Authority may determine that the person is not a fit and proper person to hold an authorisation as a CVR tester or CVR test operator. In the case of an application for CVR authorisation the Authority may refuse the application or in the case of an existing holder of CVR authorisation, suspend or revoke the authorisation.

A person who fails to notify the Authority in accordance with Section 12 of the Act or who gives false or misleading information to the Authority commits an offence.

7. Fit and Proper Person Assessors

The Road Safety Authority has designated persons in writing to be deciding officers for the purpose of deciding on the issue, offer, amendment, suspension and revocation of CVR test operator and CVR tester authorisations. These deciding officers will be responsible, having regard to the information available to them, for determining whether a person is a fit and proper person to hold an authorisation as a CVR test operator or CVR tester. All of the deciding officers are employees of the RSA.

8. Fit and Proper Policy Guidelines

Where an offence has been notified by an applicant or existing authorisation holder the Authority will assess such notifications on a case by case basis, having regard to the guidelines set out below. These guidelines set down the RSA's framework approach to determining, in a consistent manner, the effect of a conviction for a specified offence in determining whether a person is a fit and proper person. As described above, the guiding principle is that the RSA will act reasonably on the basis of the information available to it. A person who is convicted of an offence specified in section 12 of the Act of 2012 will not automatically be prohibited from holding a CVR test operator or CVR tester authorisation. Each case will be assessed on its merits.

The Authority will have regard to the following criteria (which reflect the information to be provided by a person making a notification under section 12(3) of the Act of 2012) in considering the effect of a conviction for a specified offence in determining whether a person is a fit a proper person to hold an authorisation:

- the nature of the offence
- whether the conviction is one of a number of convictions for the same or different offences
- any penalty or sentence suffered on foot of the conviction
- any disqualification or forfeiture imposed on foot of the conviction and
- whether or not the offence was committed in the course of, or in connection with, a business concerned with the testing, inspection, maintenance or repair of vehicles

Applicants from outside of the Republic of Ireland will be required to provide a statement from the relevant authority in their country of origin setting out details of their conviction.

9. Data Protection Policy

All information received by RSA will be processed in accordance with the Data Protection Acts 1988 and 2003.

Applications for a CVR test operator authorisation may, in the case of a company, contain the names of the directors of the company and the company secretary. Applicants should be aware that information disclosed to the Authority in relation to a company's application during the fit and proper person process, where one or more persons mentioned on the application is not a fit and proper person, will not be disclosed to the other directors. However, the company secretary will be advised that one or more of the persons subject to fit and proper assessment is considered not to

be a fit and proper person and that the application cannot be processed until the fit and proper requirements have been satisfactorily addressed. It will be a matter for the applicant to take such steps as it considers necessary to satisfy the fit and proper person requirements if it wishes to continue with the application.

In circumstances where the RSA determines that a person is not a fit and proper person to be a CVR tester, he or she will be immediately informed that the application cannot be processed until the fit and proper requirements have been satisfied or, in the case of an authorisation holder, the authorisation issued to the CVR tester will be suspended or revoked.

Where a CVR tester is employed at a CVR testing centre, the CVR test operator will be informed that the authorisation issued to the CVR tester concerned has been suspended or revoked as the case may be – however, for data protection reasons, the reasons for such suspension or revocation will not be disclosed to the CVR test operator.

CVR test operators and CVR testers should have regard to these guidelines in seeking to ensure that they meet the fit and proper person requirements and, in particular, CVR test operators should have their own procedures in place as outlined in section 2 to ensure that CVR testers satisfy fit and proper requirements.

10. Appealing a decision of Deciding Officer

Where a person wishes to appeal a decision to suspend or revoke an authorisation, they may do so directly to the designated RSA Appeals Officer.

11. Whistle blowing

The RSA encourages persons who believe that a person has not complied with the fit and proper person requirements or where there is a concern about CVR testing, to notify the RSA of that belief and the reasons for it. The RSA has an enforcement hotline where any such concerns can be logged. To contact the hot-line, call: 1890 253 163. All information received will be handled confidentially.