

Guide to managing agency drivers

Logistics UK Good Practice Guide

Edition 3 • July 2021



About this guide

This guide focuses on managing agency drivers to identify and share good practice. The good practices highlighted are based on real-life systems used by Logistics UK members and should stimulate ideas to improve your own systems.

Logistics UK Good Practice Guide • Guide to Managing Agency Drivers

Edition 3 • July 2021

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Using a driver who is unfamiliar with an operation and who is unknown to the operator carries with it some significant pitfalls.



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Failure to comply with the law can have a devastating effect on the organisation. In nearly every area of road transport law, a vehicle operator is as responsible for the actions of agency drivers when they are working under their control as they are for permanent drivers.

Introduction

Most organisations that operate vehicles need to rely to some extent on the flexibility of temporary drivers to cope with sudden or seasonal increases in productivity or a shortage of resources due to staff turnover and absences. Agency drivers fulfil an important role in keeping the wheels of businesses moving – quite literally. However, using a driver who is unfamiliar with an operation and who is unknown to the operator carries with it some significant pitfalls. These can be avoided with careful planning, and having a robust procurement process in place will go a long way in helping to secure a productive and compliant partnership.

Risks to the organisation

For many transport operations, the vehicle is one of the most expensive assets in terms of standing and running costs. The driver of this valuable asset is also at the heart of a safe, efficient and compliant operation. Key areas of responsibility for professional drivers include the following.

- Driver licence entitlement.
- Routine vehicle defect checks.
- Compliance with road traffic rules, including:
 - Road speeds.
 - Weight limits.
 - Use of mobile phones.
 - Load security.
- Safe, environmental and fuel efficient driving.
- Compliance with drivers' hours and records.
- Health and safety awareness.
- Image of organisation and customer care.

If the driver will be involved in transporting high value, dangerous or sensitive loads, there may also be additional security responsibilities which will need to be considered.

An agency driver may have the relevant driving licence entitlement, but not have the experience or competence to drive your particular vehicle or operate its equipment. Even minor accidents can be extremely costly when you add up the cost of repair (or excess if insured externally), the vehicle downtime, increased insurance premiums, management and administration time and the negative effect on the image of the organisation.

Failure to comply with the law can also have a devastating effect on the organisation. In nearly every area of road transport law, a vehicle operator is as responsible for the actions of agency drivers when they are working under their control as they are for permanent drivers. If drivers break the rules, this could result in fines and court/management costs together with damage to the reputation of all those involved.

Convictions or prohibitions also increase the likelihood of enforcement action being targeted against the vehicle operator and may ultimately lead to action being taken against the operator licence, including revocation – which would mean the organisation would not be permitted to operate any vehicles above 3.5 tonnes.

With so many potential pitfalls it is important that organisations have a structured and consistent approach to the use of agency drivers. The purpose of this guide is to help operators build an effective system for dealing with agencies and agency drivers.

Procurement/decision processes

Before looking at procurement issues it may be a useful option for some organisations to look at reducing reliance on the use of agency drivers in the first instance by training other staff, such as warehouse workers, to act as relief drivers. Doing so will increase flexibility within an organisation and push any risk further down the chain by using company employees with known competencies and a much better knowledge of company policies and procedures. Even so, there will still be a requirement to use agency drivers on occasion so it is important to have a procedure in place that ensures, as far as practicable, that the agency supplies the most suitable person to meet your needs.

Most problems arise because the information given to agencies is incomplete or at best, vague, making it difficult to accurately match a driver to an assignment. It follows therefore, that the first stage of the procurement process should be to assemble sufficient information to enable the agency to successfully meet your needs. Ensuring that the information is in a standard format and easily understood by the agency will increase the chances of success.

Agencies have a legal obligation to gather certain information before offering work to an agency worker. It should be noted that when the agency offers a worker an assignment, they must, at the same time give that worker details which include:

- The name of the hiring organisation and the nature of its business.
- The start date, how long the assignment is likely to be for, details of the position and type of work.
- The location.
- Working hours.
- Any risks to health and safety and how the hiring organisation will protect the worker from these.
- What experience and training is needed.
- The rate of pay and any other benefits offered by the hiring organisation.
- Whether a worker can claim any expenses.



TOP TIP

Look at reducing reliance on the use of agency drivers in the first instance by training other staff, such as warehouse workers, to act as relief drivers.



KEY POINT

It is important to have a procedure in place that ensures, as far as practicable, that the agency supplies the most suitable person to meet your needs.

By law, the agency must give these details to a worker in writing or immediately by email when they offer the assignment, or within three working days if verbally shared.

Supplying the agency with an **operator requirements form (Appendix A)** will help to find the most suitable driver for your needs, and will help capture the right information for the agency to fulfil their obligation. Key areas are:

There are various places that list driver agencies, including internet websites and business directories.

You may also wish to look at:

The Recruitment and Employment Confederation website: www.rec.uk.com

- Core business and service objectives.
- Minimum driving entitlement.
- Type of drivers' hours rules and records.
- Minimum requirements.
- Specialist operations.
- Description of work.

Legal obligations for managing driver fatigue

A common area of confusion and sometimes conflict is that of managing driver fatigue, and in particular the specific rules on drivers' hours and working time. It is important when dealing with agencies to understand where the onus lies for complying with the main legislative requirements pertaining to drivers subject to EU (tachograph) drivers' hours rules.

EU drivers' hours legislation

The EU rules apply to most goods vehicles in excess of 3.5 tonnes and passenger vehicles with more than eight passenger seats. Article 15 of the EU Drivers' Hours Regulations (Council Regulation 561/2006) places a legal obligation on transport undertakings to ensure drivers' hours rules are complied with, including a requirement to periodically check records, and to keep record sheets in good order for at least a year. A transport undertaking is defined in Article 4(p) of EU Regulation 561/2006 as:

(p) 'any legal person, any association or group of persons without legal personality, whether profit-making or not, or any official body, whether having its own legal personality or being dependent upon an authority having such a personality, which engages in carriage by road, whether for hire or reward or for own account'

Generally speaking, this definition, which refers to the party engaged in carriage by road, means that it is the vehicle operator who is the transport undertaking and not the driver agency.

The above-mentioned EU legislation is enacted into UK law through the Transport Act 1968. Section 96 of the act makes it an offence to cause or permit a contravention of EU drivers' hours rules, but importantly protects those who do not directly give orders to the driver and who could not reasonably have become aware of the contravention.

Working time legislation

The Road Transport (Working Time) Regulations 2005 apply an obligation on a mobile worker's employer to take all reasonable steps to ensure compliance and keep adequate records for two years after the end of the reference period. Where workers are subject to normal terms and conditions under a contract of employment with the driver agency or, where they are normally paid by the agency, that agency will be deemed to be the drivers' employer for the purposes of these rules.

Who must check for compliance?

As explained above and indicated in the table below, driver agencies as employers of drivers are legally obliged to ensure compliance with the working time rules. However, they are not specifically legally obliged to monitor compliance with EU drivers' hours rules, which are shown in the table in shaded rows.

Direct obligations for compliance with EU drivers' hours and working time rules for drivers.

Rule	Who?
Weekly working time average	Employer
Fortnightly driving limit	Transport undertaking
Weekly working time cap	Employer
Weekly rest	Transport undertaking
Weekly driving limit	Transport undertaking
Daily rest	Transport undertaking
Daily driving limit	Transport undertaking
Night worker daily limit	Employer
Breaks from driving	Transport undertaking
Breaks from work	Employer

General legal obligations

There are potentially more general and often more serious legal liabilities for all undertakings/employers/persons in terms of offences. If a person knows of circumstances which turn out to constitute an offence, and assists in those actions, they may be convicted of aiding and abetting. Under the Health and Safety at Work Act 1974, employers are obliged to ensure the health, safety and welfare of employees, and in extreme cases leading to fatality, an individual or body corporate may be charged with manslaughter.

Therefore, regardless of the direct obligations, it is in all parties' interests to ensure that all of the rules are observed. A compliant driver



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is also a safer driver, and safer drivers are less likely to make mistakes and cause accidents.

Possible additional checks by agencies

An agency may feel that their existing checks for compliance with working time rules already provide reasonable assurance that excessive hours are not being worked.

However, transport undertakings are often unable to check fully for compliance with all EU drivers' hours rules, particularly where the agency driver works on short-term placements for several clients or several employers. In an attempt to counter this problem, some transport undertakings require agency drivers to sign a **driver declaration (Appendix B)** prior to commencing work to confirm that they understand and comply with EU drivers' hours rules.

An agency may wish to provide an additional service to their clients by checking for compliance with some or all of the EU drivers' hours rules on a voluntary basis. They may choose to use their existing timesheet/spreadsheet system to check. Alternatively, where practicable, they may choose to analyse analogue tachograph charts and digital smart card information. There are various in-house or external solutions on the market to do this.

Choosing an agency

When researching which agencies to use, there are a number of factors that may be important to you. However, the key balance is likely to be around cost versus the level of customer service and good working practices.

To assess the agency's working practices, it is important to investigate how the agency operates. If you ask an agency if it regularly checks driving licences, it will almost certainly reply 'yes'. But if you ask 'how' it checks for driver licence entitlement, you are more likely to get a better picture of the organisation and, more importantly, if they are the sort of operation that you want to do business with. The fact that an agency may not have adequate procedures in place may not necessarily mean that you do not use them. However, the shortcomings must be addressed by the vehicle operator's own systems and of course you would expect this to be reflected in the price.

A driver agency questionnaire will help to compare prospective suppliers of agency services by using a standard format. The **driver agency questionnaire (Appendix C)** lists examples of the sorts of questions you may wish to put to potential suppliers of agency drivers. The notes are for your information only. In summary the key areas for questioning are:

- Driver identity, status, address and history.
- Driver licence checks.



A key aspect of the suitability of an agency is the contract itself. This is usually embodied within the agency's Terms and Conditions of Business which you may be asked to sign to indicate that you understand and accept them. Make sure that you obtain a copy of the contract or terms in a font size that you can read. Take time to read the entire document and question anything that you do not understand or are not happy with before you sign.

- Driver knowledge and competency checks.
- Managing driver fatigue (working time and drivers' hours).
- Matching driver to organisation.
- Health and safety risk management.
- Drivers' hours records management.
- Auditing.

Another key aspect of the suitability of an agency is the contract itself. This is usually embodied within the agency's terms and conditions of business which you may be asked to sign to indicate that you understand and accept them. Make sure that you obtain a copy of the contract or terms in a font size that you can read. Take time to read the entire document and question anything that you do not understand or are not happy with before you sign.

Finally, ensure that you satisfy yourself that the agency is properly insured (employers and public liability) and that you ask for a copy of their health and safety policy.

Managing the risks

Once a preferred supplier or suppliers have been identified and contracts signed, it may be tempting to believe that the procurement process is over. However, the process will have identified areas where the agency's working practices may expose the vehicle operator to risks in relation to safety or compliance. In any case, because of the potential for harm to the organisation, it would be good practice for the operator to duplicate some of the agency's checks before putting a driver out on assignment.

When an agency driver reports for duty it is essential that a structured, documented process is employed to protect you, the organisation and the driver. The main steps in such a process should include pre-assignment checks on the driver, induction training/briefing, competency checks and a post assignment debrief.

Pre-assignment checks

Before an agency driver is briefed and given their induction, some initial checks need to be made to ensure that the driver is suitable for the task and is legally able to carry out the work. **Agency driver pre-use checks (Appendix D)** will ensure that all of the necessary checks have been made by either the agency or the operator and that if necessary, the business can produce evidence of these checks.

The first step is to verify the driver's identity followed by checks on their experience and qualifications. Taking photocopies of all relevant documents will provide evidence that the checks have been carried out. Photocopies should be signed and dated by the competent person who has checked the details. Some drivers may object to operators or

GENERAL DATA PROTECTION



Some drivers may object to operators or agencies taking a photocopy of their driving licence or other documents believing it to be a breach of GDPR, however, this is not the case.

GDPR allows data (information) to be held where that information is required in order to fulfil a legal obligation such as ensuring that the driver has a valid licence for the class of vehicle to be driven.

For further advice visit the Information Commissioner's website at www.ico.gov.uk.

agencies taking a photocopy of their driving licence or other documents believing it to be in breach of their personal data protection however, this is not the case. The General Data Protection Regulations (GDPR) introduced on the 25 May 2018 allow data (information) to be held where that information is required in order to fulfil a legal obligation such as ensuring that the driver has a valid licence for the class of vehicle to be driven. As it is an offence under the Road Traffic Act to cause or permit another person to drive without the correct licence, there is a legal reason for requiring the information.

GDPR does, however, play a part in what happens to that information once it has been collected; the copies are classed as personnel records and should be treated as confidential, and they can only be used for the purpose for which they were taken. For further advice visit the Information Commissioner's website at www.ico.gov.uk. If a driver is unable to produce originals of any of the required documents or is reluctant to allow Driver and Vehicle Licensing Agency (DVLA) databases to be checked, it is strongly recommended that they are not used.

Driving licences should be checked to ensure that they are in date and have entitlement for the class of vehicle to be driven. Make sure you take a record of the photocard issue number and regularly use DVLA's on-line free licence checking services. Check for any endorsements/penalty points, make sure the photograph matches the person presenting the licence and that the photograph is in date. The driver should also make a declaration to the operator regarding their driving entitlement and their fitness to drive. The driver licence checklist and declaration (Appendices E1 and E2) will help to achieve this and can be adapted to suit the needs of the organisation.

Check to see if the driver is required to hold a Driver Certificate of Professional Competence (DCPC). Drivers holding a vocational driving licence to drive goods and passenger vehicles need to hold a DCPC and must carry the qualification card whilst driving. If the driver holds a digital tachograph card this must also be carried when driving.

The driver may also be expected to operate specialised equipment such as lorry loader cranes, refrigeration units, fork lifts etc. If this is the case, the operator should ask to see any relevant certificates and/or competence cards; check carefully that the document relates exactly to the equipment to be operated. For instance, a training certificate for a normal counterbalance fork truck should not be accepted as evidence of adequate training for a lorry mounted fork lift.

If the journey will involve driving under EU drivers' hours regulations it is essential to ensure that the driver holds the correct records. A driver must be able to produce their digital tachograph or Smart card, if they have been issued with one even if they are driving an analogue vehicle. Whilst checking any records produced, the operator should take the opportunity to check them for drivers' hours compliance, paying particular attention to ensuring that the driver has had the required rest periods. However, bear in mind that this check will not guarantee



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A driver must be able to produce their digital or Smart tachograph card if they have been issued with one, even if they are driving an analogue vehicle.

that the driver is fit for duty, as you may not have access to all the information.

Finally, ask the driver to sign the **driver declaration (Appendix B)**. This asks the driver to confirm that they are legally able to perform the duties that you require them to carry out.

Induction training/briefing and competency checking

It is the legal responsibility under the Health and Safety at Work Act for both the agency and the customer to ensure that a driver is given an adequate induction before starting work for a client. There are many cases of agencies and clients being prosecuted under health and safety legislation for failing to cooperate with each other to ensure that the driver was adequately trained for the assignment. In addition to the health and safety aspect, a good induction programme which includes company operational procedures, product knowledge and customer care should ensure that the agency driver's work is almost indistinguishable from that of the operator's own drivers.

If you carry out random drug and alcohol tests on your existing drivers as part of your risk management policies, consider extending this to agency drivers. However, you will need to establish a system of consent and should work with the agency on this.

Having established that the agency worker is suitable and can legally carry out any work required, it is essential that the driver is given an adequate induction programme/briefing which should include an element of assessment such as:

- Theory tests (should have a minimum pass mark) administered by you or the agency concerned, topics may include:
 - Highway Code.
 - Vehicle safety and roadworthiness.
 - Drivers' hours legislation.
 - Tachographs.
- Eye sight check by an approved method or, if not available, reading a numberplate from 20 metres (cars registered before 2001 the distance will be 20.5 metres) – this could be included at the start of a practical assessment (see below).
- Driving assessment conducted by a competent assessor/instructor (competence can be shown in a number of ways, eg, experience, or RTITB/DVSA approval).
- Competency assessment for specialised equipment, eg, a lorry mounted crane. An example of standard checklist or a crane is included in **Appendix F (lorry mounted crane assessment)**.

Where an operator uses agency drivers on a regular basis, it is essential that the driver receives a full induction which is at least equivalent to the programme given to a full time driver. Obviously, it would be impractical to provide a full induction at the beginning of every assignment so

! TOP TIP

Consider arranging for agency drivers to attend an induction session where they can receive training appropriate to your requirements. An induction programme would include vehicle familiarisation, daily vehicle checks, defect reporting, the correct way to access the cab and the load area, coupling and uncoupling trailers, safe loading and load retention.

consider arranging for agency drivers to attend an induction session where they can receive training appropriate to your requirements. It may be possible to negotiate with an agency in relation to costs associated with these sessions, particularly if the sessions are likely to result in increased use of the drivers.

Deciding what to include in an induction programme can be difficult, so breaking the process down into specific areas will make the process easier. Health and safety will be a high priority and should include items such as fire and emergency procedures, site safety, accident and near miss reporting, first aid and personal protective equipment (PPE) requirements, ie, are safety footwear, high visibility clothing, hard hats etc required and who will provide them?

Commercial vehicles represent a considerable investment which means that any unplanned downtime is costly so it makes sense to ensure that anybody who will drive the vehicles is fully aware of their responsibility to carry out proper daily vehicle checks, to drive safely and to look after the vehicle. With this in mind, an induction programme would include vehicle familiarisation, daily vehicle checks, defect reporting, the correct way to access the cab and the load area, coupling and uncoupling trailers, safe loading and load retention. If the assignment will require the driver to use specialised equipment such as tail lifts, fridge units and gear boxes, they will need to be included in this section.

Once an agency driver leaves your premises he is presenting the public face of your organisation to other road users and to your customers/suppliers so it makes sense to ensure that your agency driver is aware of the standards expected of them whilst on the road. Areas that would fall into this area of induction could include public perception, personal appearance, courtesy and customer care, and safe and defensive driving. This section would also include operational procedures such as documentation systems, route details, and directions to delivery/collection points, mobile phone policy and a return to depot procedure.

A suggested format for an **agency driver induction (Appendix G)** is available to help build a comprehensive induction plan. If your company has a driver handbook or manual, issue one to the driver and it will be a useful reference tool. Although some of the suggested items in the induction checklist may seem like the basic skills that an experienced driver would be expected to have, it would be a mistake to make such an assumption as it could lead to problems in the event of an accident. If an operator could not show that the driver had received adequate training in such matters then they could be at risk of paying compensation through a civil claim for injury and, in addition, may leave themselves exposed to a prosecution for a breach of health and safety laws.

Inductions are not a 'one off' exercise. Dependent on the complexity of the information imparted they should be reinforced with a refresher session at regular intervals.

Once induction has been completed

One final word on inductions, they are not a 'one off' exercise. Dependent on the complexity of the information imparted they should be reinforced with a refresher session at regular intervals, especially if

the driver has not worked with you for some time. Generally the greater the information imparted in the induction, the shorter the validity period should be. Completed induction forms should be signed by the driver and the manager/supervisor who organised the training and then filed with the driver declarations and kept for at least three years.

Now our agency driver is almost ready to go on the road. The vehicle and any trailer should be checked for damage or defects by both the driver and a supervisor (this could be doubled up as training for routine vehicle checks) and make sure the driver has the required drivers' hours records, sufficient supplies of digital tachograph print roll or analogue charts, and directions and contact numbers for delivery points and the operator. Make one final check to ensure the driver is happy with everything and has no concerns or queries regarding the work they have been asked to do.

On completion of duties

Once a driver has returned to depot, it is important that the assignment is completed in a proper manner so as to avoid any problems that may crop up days, or even weeks, after the event.

The vehicle/trailer should again be checked for damage by a supervisor and the driver, refuelled and cleaned if necessary. As part of the driver debrief process the driver should complete an **end of assignment declaration (Appendix H)**. This form allows the driver to record any incidents or roadside checks that may have taken place during their duty and will enable the company to manage any follow up action required.

Take copies of tachograph charts or download the driver's digital/Smart tachograph card. By signing the form the driver is acknowledging that they are aware of the requirement to return tachograph charts to the operator within 42 days; in the event of non return, the form and copy charts will help to minimise any possible repercussions. If the charts are not returned, send the agency a standard letter – **example tachograph letter to agency (Appendix J)** – detailing which charts are missing and requesting their return, enclose a form **tachograph request response form (Appendix K)** for the agency to complete if the charts are genuinely unavailable. If you do become involved in a dispute with an agency about the return of charts or other matters, check your contract with the agency carefully before withholding payment of invoices. Otherwise the agency may choose to pursue the matter through the civil courts.

If you do become involved in a dispute with an agency about the return of charts or other matters, check your contract with the agency carefully before withholding payment of invoices. Otherwise the agency may choose to pursue the matter through the civil courts.

Agencies and the law

Although this guide deals mainly with your obligations as the user of an agency it can be useful to have a basic understanding of the legal obligations that employment agencies must work to. By law, employment agencies must comply with the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003. Employment businesses and employment agencies

are defined in section 13 of the Employment Agencies Act 1973 and regulation 2 of the 2003 regulations. These regulations stop them, for example, from charging workers fees for finding jobs. They must also ensure a worker has any qualifications legally required to do the work.

In December 2008 the EU Directive 2008/104/EC on Temporary Agency Work (The 'Agency Workers Directive – AWD') was published. This directive was brought into UK law through the Agency Workers Regulation 2010. The regulation states that after a qualifying period of 12 weeks, the basic working and employment conditions (working time, overtime, breaks, rest periods for night work, holidays and pay) of temporary agency workers must be at least as beneficial as those that would apply if they had been recruited directly.

What this means to you as an employer is if you hire temporary agency workers through a temporary work agency, you should provide your agency with up to date information on your terms and conditions so that they can ensure that an agency worker receives the correct equal treatment, as if they had been recruited directly, after 12 weeks in the same job. You are responsible for ensuring that all agency workers can access your facilities and are able to view information on your job vacancies from the first day of their assignment with you.

The Swedish Derogation (referred to as 'pay between assignments' contracts) was abolished on the 6 April 2020, so all agency workers are entitled to the same rate of pay as their permanent counterparts after 12 weeks.

IR35 off pay role rules

From 6 April 2021, all public authorities and medium and large-sized clients outside the public sector are responsible for deciding if the rules apply to them. If a worker provides services to a small client outside the public sector, the worker's intermediary is responsible for deciding the worker's employment status and if the rules apply. This applies to an employer if you meet two or more of the following conditions:

- You have an annual turnover of more than £10.2 million.
- You have a balance sheet total of more than £5.1 million.
- You have more than 50 employees.

What you need to do as a client

You'll need to decide the employment status of every worker who operates through their own intermediary, even if they are provided through an agency.

You should communicate your determination using a Status Determination statement (SDS). An SDS must be passed to the worker and the person or organisation you contract with and you must give your conclusion and the reasons for coming to it. You'll also need to:

- Make sure you keep detailed records of your employment status determinations, including the reasons for the determination and fees paid.
- Have processes in place to deal with any disagreements that arise from your determination.
- Confirm the size of your organisation if asked by the person or organisation you contract with, or the worker.
- If off-payroll working rules apply, you will need to deduct and pay Income Tax and National Insurance contributions to HMRC.

Small-sized private sector clients will not have to decide the employment status of a worker. This will remain the responsibility of the worker's intermediary (usually a limited company). However, you must confirm your size if asked by the person or organisation you contract with, or the worker. This is to make sure that you, agencies and workers can consider what rules apply.

Right to work checks

The UK has left the European Union (EU) and the Immigration and Social Security Coordination (EU Withdrawal) Act 2020 ended free movement law in the UK on 31 December 2021. On 1 January 2021, a grace period of six months began, during which time relevant aspects of free movement law were saved to allow eligible EU, EEA and Swiss (EEA) citizens and their family members resident in the UK by 31 December 2020 to apply to the EU Settlement Scheme (EUSS). This period ended on 30 June 2021.

From 1 July 2021, EEA citizens and their family members require immigration status in the UK, in the same way as other foreign nationals. They can no longer rely on an EEA passport or national identity card to prove their right to work.

All employers in the UK have a responsibility to prevent illegal working. You do this by conducting simple right to work checks before you employ someone, to make sure the individual is not disqualified from carrying out the work in question by reason of their immigration status.

Even if you are not the direct employer of the workers involved in your business, there are compelling reasons why you should seek to know that your workers have a right to work. If illegal workers are removed from your business, it may disrupt your operations and result in reputational damage. There could be adverse impacts on your health and safety and safeguarding obligations, as well as the potential invalidation of your insurance if the identity, qualifications, and skill levels of your workers are not as claimed. Accordingly, you may wish to check that your contractors conduct the correct right to work checks on people they employ.

Guidance can be found within the Home Office publication found at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/999119/FINAL_Employers_Guide.pdf



TOP TIP

Make it clear to an agency that you reserve the right to audit their procedures for supplying drivers to your business to ensure compliance with the agreed processes.

And finally...

A good agency driver is a valuable asset to a user organisation; their contribution can increase flexibility and productivity enormously. By implementing the measures in this guide your operation should get the maximum benefit whilst remaining compliant with the multitude of legislation transport undertakings are faced with.

In order to maintain a high level of service from your agency and the drivers they supply, it is important to constantly monitor the performance of the agency, their drivers and their working relationship with your business. To get the best out of this relationship it is important to maintain the dialogue by seeking feedback from managers and supervisors and the agency drivers themselves. Making periodic checks to ensure that risk management is being carried out and is effective will protect the organisation and any staff involved in the process. Make it clear to an agency that you reserve the right to audit their procedures for supplying drivers to your business to ensure compliance with the agreed processes. As a basis for your audit use the **operator requirements form (Appendix A)** and the **driver agency questionnaire (Appendix C)** to ensure that all of your requirements are being met or to identify where changes may need to be made.

Finally, as with any system there should be a review process. For agency workers the system should be reviewed following events such as an accident or incident or when changes to operational procedures are made or following a complaint; in any case there should be a periodic review just to check that the policy is still valid, operating properly and does not require changing.

Further sources of information

Logistics UK Member Advice Centre, www.logistics.org.uk, www.gov.uk, www.hse.gov.uk and www.hse.gov.uk/workplacetransport

Appendix A – Operator requirements form

Name of transport undertaking	
Core business and service objectives	
Geographical coverage	
Approximate number of driver days/hours required in a set period of time. For example, this may be itemised per month and mapped out over a typical year to show seasonal fluctuation	
Minimum driving entitlement (eg, C, C+E or C1+E)	
Drivers' hours rules (eg, domestic or EU drivers' hours rules)	
Digital tachograph smart card required (yes or no)?	
Specialist equipment/operation competence requirements, such as: <ul style="list-style-type: none"> • ADR (carriage of dangerous goods). • Fork lift truck (reach, counterbalance etc). • Lorry loaders. • First aid. • Fire safety/extinguishers. • International transport. • Food hygiene. • Temperature control. • Animal transport. • Airside security. • Customer care. • High value/sensitive load. • Tipper. • Construction site safety. • Defensive/safe driving. • Fuel efficient driving. 	
Minimum age or experience	
Level of both written and oral English required for job function	
Description of work that affects suitability of driver, eg, contact with customers (smart appearance required), manual handling, completion of records (basic numeracy/literacy required) etc	
Any other special requirements	

Appendix B – Agency/casual drivers declaration

Agency/casual driver declaration

This declaration is to be signed before starting work with _____
(company/organisation name)

This is a declaration that I _____ (driver name) understand and will comply with all relevant legislation in relation to road transport and any other reasonable requests during my placement with the above-mentioned company/organisation.

In particular I declare that I:

- Have taken sufficient daily and weekly rest prior to my placement.
- Have sufficient duty and driving time available to be able to work the shift(s) allocated to me.
- Have (and will continue to have) on my person the drivers' hours records required to be produced to an enforcement officer if requested, namely:
 - My digital driver's card (if I hold one).
 - Analogue tachograph charts for the current day and the previous 28 calendar days (if I drove a vehicle fitted with analogue equipment in that time).
 - Any written manual records and printouts legally required for the current day and the previous 28 calendar days.
- Will ensure the original analogue charts and any legally required printouts or written manual records, which relate to my placement, are returned to the above-mentioned company/organisation within 42 days.
- Will ensure my digital driver's card is downloaded at the required intervals and in any case at the end of my placement, before I leave the site.
- Understand and will comply with the rules on working time limits for mobile workers in the road transport sector.
- Have a full valid licence (with no disqualifications) for the type of vehicle I am being asked to drive.
- Where appropriate, hold a Driver CPC and am carrying my Driver CPC qualification card.
- Where appropriate, carry relevant qualification documents required by the type of goods carried, for example, ADR Certificate.
- Will inform the company of any encounters with DVSA, police or other enforcement officer.
- Will report any accidents or near misses that I am involved in.
- Will carry out my daily vehicle checks using the documents provided and report any defects.
- Understand and will comply with speed limits of roads and vehicles.
- Will not drive a vehicle whilst under the influence of drink or drugs (whether illegal or prescribed).
- Will not use a mobile phone or other handheld communication device whilst driving.
- Will ensure that the load on my vehicle is secure and within the limits of the vehicle in terms of weight and distribution.
- Will comply with any health and safety requirements on this site and any site visited during my placement.
- Will return the vehicle and its equipment in the same condition that I received it in.

I declare that I am legally able to undertake the duties required of me and will advise the company/organisation if I have any doubts, concerns or problems with any issue in relation to performing my duties during my placement.

Signed _____ Date _____

Appendix C – Driver agency questionnaire

Name of agency	Agency practice	Agency response	Comments	Notes
	How do you check a driver's identity, employment status and employment history?			The agency should demonstrate a thorough identity check (including National Insurance number) and confirm their employment status in the UK. It should take up references and investigate any gaps in employment history. Additional security checks may be necessary for high-value, dangerous or sensitive loads.
	How do you check that the driver is able to supply a satisfactory UK address?			Where drivers are unable to provide a satisfactory UK address they may be asked to pay a deposit of up to £900 if offences are detected at the roadside. Failure to pay at the time could lead to a vehicle being immobilised. Agencies should cross check the driver's address details on forms, licences, tachograph cards etc. Drivers with non-UK licences should have registered with DVLA.
	How do you regularly check driving licences?			A 'gold standard' check would be a DVLA check, where a driver has proved the authorisation or a check code to allow the agency to obtain real time confirmation from DVLA of continuing entitlement every six months or more, if there are points on the licence. An adequate system may be a physical check of the driver's licence every 12 months and regular online checks. Contact DVA in Northern Ireland for an NI issued DL
	How do you test drivers for knowledge and competence in: <ul style="list-style-type: none"> • Drivers' hours and records rules. • Routine vehicle defect checks. • Working time rules. • Highway Code. • Safe/defensive driving Techniques. • Fuel efficient driving. • Safe and legal loading. • Use of specialist equipment. • Levels of written and oral English? 			This list should reflect the needs of the organisation – see the operator requirements form in Appendix A. The agency could satisfy this section by carrying out assessments (practical or written tests) checking for training certificates or by delivering training. Where an agency does not do this, or even if it does, in certain critical or legal areas the operator may wish to provide these competency checks or training itself.

Name of agency	Agency practice	Agency response	Comments	Notes
	How do you ensure drivers are kept up to date on changing legislation or equipment, such as Smart tachographs, and how do you plan to ensure drivers obtain periodic Driver CPC training?			As best practice you are looking for the agency to demonstrate that it keeps up to date with changes in legislation and provides regular information and training to its drivers. You also need to be satisfied that drivers will be appropriately qualified for Driver CPC.
	How do you ensure compliance with the road transport working time rules?			The agency will almost certainly be legally responsible for compliance with these rules which apply maximum average weekly working limits, a weekly working cap, night work limits, minimum daily and weekly rest periods and minimum breaks from work. The law requires them to ensure that drivers are informed of the rules, the rules are complied with and records are kept for at least two years following the reference period in question. If an agency does not comply with these legal obligations it will be breaking the law and may be supplying fatigued drivers. It is recommended that this is considered a serious failing – in other words a ‘show stopper’ – in a potential supplier.
	How do you ensure compliance with drivers’ hours rules?			The operator is primarily responsible in law for this. However, you should expect agencies to understand rules on weekly rest and fortnightly driving and have systems in place to help ensure compliance.
	How do you match a driver to our requirements?			An agency should have systems in place to understand and keep a record of your specific requirements. See the form in Appendix A above on the information that the agency is likely to need. A good agency is likely to have a similar form.
	How do you assess the health and safety risks at the operator’s premises and other sites to protect your employees?			All employers have a duty of care to ensure employee health, safety and welfare are safeguarded while at work. The agency should have systems in place to work with the vehicle operator and other occupiers of premises (who also hold a duty of care) where their employees will work to assess risk and put in place safe working practices.

Name of agency	Agency response	Comments	Notes
Agency practice			
How do you ensure tachograph charts are returned to us?			The driver is legally required to return original tachograph charts to the transport undertaking within 42 calendar days. The undertaking is legally required to retain these records for at least a year. An agency should have a system in place to contact the driver and arrange for the charts to be returned (for example by sending them a stamped addressed envelope) and a disciplinary procedure in place if they continue to fail to return the charts.
What systems do you have in place if the operator forgets or is unable to download data from a driver's digital tachograph card?			The operator has a legal obligation to download digital drivers' hours data from agency drivers under its control and this should be carried out immediately before the agency driver completes their placement. However, should this not happen, the agency should have a system in place to get the digital data to the operator – either by downloading it themselves and sending it (eg, via e-mail) or by getting the driver to revisit the depot.
What other systems do you have in place to ascertain a driver's competence and suitability?			This could include aptitude, communication numeracy/literacy etc.
What systems do you have in place to audit your own processes and are you happy to include a right for us to audit your processes within the contract?			Auditing systems show that an organisation is likely to have a culture of continual improvement and if they are happy for you to audit them, should show they are confident that their systems are followed at grass roots level.
Driver identity/history check			This may be particularly relevant for vehicles carrying high value, dangerous or sensitive loads.
Driver licence and Driver CPC check			It is recommended that the operator always checks driver licence entitlement and keeps a copy on file, unless they are satisfied that the agency system is robust and always followed.

Appendix D – Agency driver pre-use checks

Check	Agency	Operator	Notes
EU drivers' hours – production of records			For the EU rules a driver must carry their digital driver's card (if they hold one) and any analogue charts and legally required records for the current day and previous 28 calendar days. This is recommended as an operator check.
Drivers' hours – sufficient daily and weekly rest			It is recommended that the operator always checks for this where possible.
Knowledge and competence in: <ul style="list-style-type: none"> • Drivers' hours and records rules. • English (oral and written). • Routine vehicle defect checks. • Working time rules. • Highway code. • Safe/defensive driving techniques. • Fuel efficient driving. • Safe and legal loading. • Use of specialist equipment. • Understanding of specialist operation. • Understanding of customer care issues. • Documentation familiarisation. • Accident reporting procedures. • Route identification. • Health and safety policies and safe working practices. • Who to contact if in any doubt or in case of emergencies. 			As a minimum the operator must ensure the driver is familiar with defect reporting systems and site specific health and safety policies and safe working practices. Competence of other operational issues may be tested by assessment or imparted by training.
Agency driver declaration			This is usually carried out by the operator – see Logistics UK example.

Appendix E1 – Driver licence checklist

Driver licence checklist

General

- ☐ Check ALL licences.
- ☐ Ensure drivers produce licence (Northern Ireland (DVA) still issue the counterpart to the driving licence).
- ☐ Take a photocopy of both sides of licences and sign and date the copies.

Check

- ☐ Personal details are correct – name, date of birth and address.
- ☐ Issue number and issue date against last check.
- ☐ Whether any medicals/renewals are due in the near future – if so advise driver.
- ☐ Age restrictions.
- ☐ Driver holds required entitlements.
- ☐ Restriction and exchange codes.
- ☐ Photocard expiry date.
- ☐ Any new endorsements/disqualifications.

Ask driver to sign declaration that they:

- ☐ Have produced their latest licence.
- ☐ Have not had a change in health/eyesight which could affect their entitlement to drive – if so they must also inform DVLA.
- ☐ Do not have any pending convictions, endorsements or disqualifications.
- ☐ Will inform you and DVLA or DVA if an NI issued driving licence, if their health/eyesight changes in a way which could affect their entitlement to drive.
- ☐ Will inform you of any road traffic incidents, convictions, endorsements or disqualifications which could affect their entitlement to drive.

If in doubt about the validity of a licence you can check directly with DVLA with the driver's permission or request that the driver supplies a driving licence check code. (GB only):

- ☐ By telephone on a premium rate number (0906 139 3837) 08:00 to 20:00hrs weekdays, 08:00 to 18:00hrs on Saturdays.

In Northern Ireland driver licensing is administered by the Driver & Vehicle Agency (DVA) based in Coleraine. At the moment DVA does not have an on-line equivalent to DVLA's View My Licence where the licence holder is able to generate a check code. Therefore, checks by an employer can be made by contacting DVA at 0300 200 7861, option 3 for DCPC info, Option 4 for a licence check. Note that DVA does not issue check codes. Permission can be obtained in two ways, the first with the driver in attendance on the call and the second is where the driver contacts DVA before hand to leave permission for the employer to call. Note that in this case, DVA must receive the driver's **full** name, the driver's licence number, date of birth and **full** address details.

DVA is available from 09:15 to 16:00hrs, Monday to Friday, except bank holidays. Opening times for every fourth Tuesday of the month are 10:00 to 16:00hrs.

Appendix E2 – Driver licence declaration

Driver licence declaration

It is an offence for a person to drive on a road any vehicle otherwise than in accordance with a licence authorising him to drive it. It is also an offence for a person to cause or permit another person to drive it.

This is a declaration that I _____ (driver name) have produced my latest licence, and that I have no pending convictions, endorsements or disqualifications.

I have had no change in my health which could affect my entitlement to drive, in particular for ALL licences:

- Epilepsy.
- Fits or blackouts.
- Repeated attacks of sudden disabling giddiness (dizziness that prevents you from functioning normally).
- Diabetes controlled by insulin.
- An implanted cardiac pacemaker.
- An implanted cardiac defibrillator (ICD).
- Persistent alcohol abuse or dependency.
- Persistent drug abuse or dependency.
- Parkinson's disease.
- Narcolepsy or sleep apnoea syndrome.
- Stroke, with any symptoms lasting longer than one month, recurrent 'mini strokes' or TIAs (transient ischaemic attacks).
- Any type of brain surgery, severe head injury involving inpatient treatment, or brain tumour.
- Any other chronic (long-term) neurological condition.
- A serious problem with memory or episodes of confusion.
- Severe learning disability.
- Serious psychiatric illness or mental ill health.
- Total loss of sight in one eye.
- Any condition affecting both eyes, or the remaining eye only (not including short or long sight or colour blindness).
- Any condition affecting the visual field (the surrounding area seen when looking directly ahead).
- Any persistent limb problem for which driving has to be restricted to certain types of vehicles or those with adapted controls.

Also, for vocational licences:

- Angina, other heart conditions or heart operation.
- Diabetes controlled by tablets.
- Visual problems affecting either eye.
- Any form of stroke, including TIAs (Transient Ischaemic Attacks).

If any of the above affects me I will inform my employer as soon as possible. I understand that I must also inform DVLA by writing to Drivers Medical Group, DVLA, Swansea SA99 1TU (the appropriate medical questionnaires can be downloaded from www.direct.gov.uk/driverhealth). Failure to do so is a criminal offence punishable by a fine of up to £1,000. I will inform my employer of any road traffic incidents, convictions, endorsements or disqualifications that occur, which could affect my entitlement to drive, as soon as possible.

I have read and fully understand the above and will comply with what is requested of me.

Signed _____ Date _____

Appendix F – Agency driver induction

Lorry mounted crane assessment

Date of assessment _____

Name of supplying agency _____

Name of driver _____

Before assessment the candidate must produce a current training certificate/card covering the equipment to be used – a copy of this should be taken and filed with this form.

Current training certificate/card produced (tick box) ☐ Date of expiry _____

Before the assessment ensure that the vehicle is positioned in an open area with a suitable test load positioned nearby. Explain to the driver that the assessment is to:

- ☐ Prepare crane vehicle for operation of the crane.
- ☐ Carry out safely the loading of the test load with the crane.
- ☐ Carry out safely the unloading of the test load with the crane.
- ☐ Prepare the vehicle for road use after the delivery.

All parts of the assessment must be completed. To pass the competency check there must be a 'Yes' to all of the elements. A single 'No' will be classed as a failure and a further briefing must be carried out before re-testing.

COMPETENCY CHECKLIST

<input type="checkbox"/> Was a hard hat with chinstrap, safety footwear and high visibility clothing used during the operation?	Yes/No
<input type="checkbox"/> Was check made to ensure the vehicle was on firm level ground?	Yes/No
<input type="checkbox"/> Was the need to ensure all round clear vision adequately demonstrated, including checking for overhead obstructions?	Yes/No
<input type="checkbox"/> Were the stabilising legs fully extended on both sides of the vehicle?	Yes/No
<input type="checkbox"/> Were the stabilising leg shut off valves closed after above operation?	Yes/No
<input type="checkbox"/> Was the off loading area clear of all other people and cordoned off with cones or other barrier?	Yes/No
<input type="checkbox"/> Did the operator stand on the working platform or in a safe position on the floor?	Yes/No
<input type="checkbox"/> Was the weight of the load to be lifted checked?	Yes/No
<input type="checkbox"/> Was the stability of the load in the grab or slings checked before lifting?	Yes/No
<input type="checkbox"/> Was safe practice adequately demonstrated when going on or off the vehicle bed? – eg, three points of contact, using access steps?	Yes/No
<input type="checkbox"/> Were the off loaded goods lifted correctly, keeping them as low as possible?	Yes/No
<input type="checkbox"/> Was the action of the crane smooth and progressive, particularly when slinging?	Yes/No
<input type="checkbox"/> Was the off loading completed in one movement without leaving the goods hanging in the air?	Yes/No
<input type="checkbox"/> Was the operator continually checking the off loading area to make sure no-one entered the area?	Yes/No
<input type="checkbox"/> Was the crane stowed safely at the end of the operation with the stabilising legs fully retracted and stowed with the leg shut off valves closed?	Yes/No
<input type="checkbox"/> Was a check made to ensure that all remaining products were secure and the vehicle was safe to travel?	Yes/No

Depot _____

Name and signature of driver _____ / _____

Name and signature of assessor _____ / _____

Comments _____

PASS: YES/NO

Appendix G – Agency driver induction

Agency driver induction

Training/instruction/information received by _____ (driver name)

Training/instruction received	Date
Vehicle familiarisation	
Routine vehicle checks	
Defect reporting	
Coupling and uncoupling	
Loading and unloading	
Load security, distribution and avoiding overloads	
Load specific training (eg, food hygiene, dangerous goods awareness etc)	
Site safety	
Fire and emergency evacuation	
Accident, spillage and near miss procedures	
First aid	
Mobile phones and in-cab communications policy	
Security	
Transport management and documentation systems	
Courtesy, company image	
Safe and fuel efficient driving	
Personal Protective Equipment (PPE)	
Specialised equipment (tail lifts etc)	
Manual handling	
Route details and return to depot policies	
Smoking policy	

Information/equipment received	Date
PPE (list details)	
Driver's handbook	
Site safety sheet	
Route documentation	
Sufficient print roll/tachograph charts	
Emergency contact details	

Driver

I declare that I have received and understood the training, instruction and information shown above and have received the equipment specified.

Signed _____ Date _____

Manager/supervisor signature

Signed _____ Date _____

Appendix H – End of assignment declaration

End of assignment declaration

To be completed by the agency driver at the end of **each** shift

Driver name _____

Have you, or your vehicle, been involved in a accident or incident during your shift?	Yes/No
Have you suffered any injury, no matter how minor, during your shift?	Yes/No
Have you been subject to any roadside check or enforcement during your shift, ie, DVSA, the police or other enforcement agency?	Yes/No

If you have answered ‘Yes’ to any of the above questions please provide details below, continuing on a separate sheet if necessary.

If you have been in an accident of any sort you must also complete an accident report form.

I declare that:

- All deliveries/collections have been completed in accordance with the instructions given at the start of my shift.
- I have completed all required tachograph records in accordance with the EU drivers’ hours regulations.
- My digital tachograph card has been downloaded and where appropriate copies of my tachograph charts have been taken.
- I have taken sufficient rest and breaks for drivers’ hours and working time purposes.
- I confirm that I will return relevant tachograph records to the company within 42 days as required by law.

Vehicle checked for damage Yes/No

Signed (driver) _____

Signed (manager/supervisor) _____

Date _____ Time _____

The manager/supervisor signing this form should indicate whether the vehicle was checked for damage on return to the site.

Appendix J – Example analogue tachograph letter to agency

To (agency address)

Date

Dear

The following driver(s) were supplied to us through your agency on DD/MM/YYYY.

A check of our records shows that the tachograph records for this period have not been returned to us. As I am sure you are aware it is a legal requirement for the original tachograph records to be returned to the vehicle operator within 42 days.

Would you please contact the driver(s) concerned and remind them that failure to return the charts within 42 days is a breach of Section 97c of the Transport Act 1968, the maximum penalty for failing to comply is a fine of up to £2,500 per offence.

If you are unable to return these records to me for any reason please sign, date and return the enclosed response form for our records.

Yours sincerely/faithfully

Appendix K – Analogue tachograph request response form

To *(operator address)*

Date

Dear

Re: Driver *(name)*

Thank you for your recent letter, unfortunately we have been unsuccessful in obtaining the tachograph records for driver *(name)* for the period *(dates)*.

We will, of course, try to obtain the records if we possibly can and we will as requested ensure that drivers are aware of their legal responsibility to return tachograph records to the vehicle operator.

We apologise for this inconvenience.

Yours sincerely/faithfully

T: 01892 526171* F: 01892 534989 www.logistics.org.uk

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