

2018 No.

PUBLIC PASSENGER TRANSPORT, ENGLAND

**The Appeals to Traffic Commissioners (Procedure) (England)
Regulations 2018**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	2018

The Secretary of State makes the following Regulations in exercise of the powers contained in sections 6F(4) of the Transport Act 1985(a) and 123T(7) of the Transport Act 2000(b).

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Appeals to Traffic Commissioners (Procedure) (England) Regulations 2018 and come into force on 31st May 2018.

(2) These Regulations apply in England only.

(3) In these Regulations—

“the 1985 Act” means the Transport Act 1985;

“the 2000 Act” means the Transport Act 2000;

“appeal” means an appeal under section 6F(2) of the 1985 Act or section 123T(1) to (4) of the 2000 Act;

“appellant” means a person making an appeal under section 6F(2) of the 1985 Act or a person of the description in any of subsections (1) to (4) of section 123T of the 2000 Act;

“the commissioner” means the traffic commissioner to whom an appeal has been made;

“direction” means a direction under regulation 3(2);

“Notices and Proceedings” means the statement of that description within the meaning of regulation 3 of the Public Service Vehicles (Traffic Commissioners: Publication and Inquiries) Regulations 1986(c);

“notice of appeal” has the meaning given in regulation 8;

“respondent” means—

(a) in relation to an appeal under section 6F(2) of the 1985 Act, the local transport authority or authorities mentioned in section 6F(2)(b), and

(b) in relation to an appeal under section 123T(1) to (4) of the 2000 Act, the franchising authority or authorities that made the decision against which the appeal is made;

“response notice” has the meaning given in regulation 9.

(a) 1985 c. 67; section 6F was inserted by section 13 of the Bus Services Act 2017 (c. 21).

(b) 2000 c. 38; section 123T was inserted by section 4 of the Bus Services Act 2017.

(c) S.I. 1986/1629; regulation 3 was amended by S.I. 2009/443 and S.I. 2014/3142.

Overriding objective

2.—(1) The overriding objective of these Regulations is to enable the commissioner to deal with appeals fairly and justly.

(2) The commissioner must seek to give effect to the overriding objective when exercising any power under these Regulations, or interpreting any provision in these Regulations.

(3) Appellants and respondents must help the commissioner to further the overriding objective and co-operate with the commissioner generally.

Case management powers

3.—(1) Subject to these Regulations, the commissioner may determine any procedure to be adopted in relation to an appeal.

(2) The commissioner may give a direction in relation to the conduct or disposal of an appeal, including a direction amending, suspending or setting aside an earlier direction.

(3) A direction may be given on the application of the appellant or respondent, or on the commissioner's own initiative.

(4) An irregularity resulting from a failure to comply with any provision of these Regulations or a direction does not of itself render void an appeal or any step taken in the appeal.

(5) If an appellant or respondent fails to comply with a requirement of these Regulations or a direction, the commissioner may take such action as the commissioner considers just which may include—

- (a) waiving the requirement;
- (b) requiring the failure to be remedied;
- (c) striking out all or part of an appeal; or
- (d) barring or restricting an appellant or respondent's participation in the appeal.

(6) A commissioner may strike out an appeal if there is no reasonable prospect of the appeal succeeding.

(7) If an appeal is struck out under this regulation, the appellant may, within 28 days of the date on which the commissioner sent notification to the appellant of the striking out, apply to the commissioner for the appeal to be reinstated, giving the grounds on which reinstatement is sought.

Representatives

4.—(1) Any person entitled or permitted to take part in a hearing may do so on that person's own behalf or be represented by counsel, solicitor or at the discretion of the commissioner, by any other person.

(2) A representative appointed under this regulation may do anything permitted or required under these Regulations or a direction.

Calculating time

5.—(1) An act required by these Regulations or a direction to be done on or by a particular day must be done before 5pm on that day.

(2) If the time specified by these Regulations or a direction for doing any act ends on a day other than a working day, the act is done in time if it is done before 5pm on the next working day.

(3) In this regulation "working day" means any day except a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(a).

(a) 1971 c. 80.

Sending and delivery of documents

6.—(1) Any document to be provided to the commissioner under these Regulations or a direction must be—

- (a) sent by prepaid post or delivered by hand to the office of the commissioner;
- (b) sent by electronic transmission to the office of the commissioner; or
- (c) sent or delivered by such other method as the commissioner may permit or direct.

(2) If an appellant or respondent provides the commissioner with an electronic address they must accept delivery of documents by that method.

Lead cases

7.—(1) This regulation applies if two or more appeals have been made to the commissioner which give rise to common or related issues of fact or law.

(2) The commissioner may give a direction specifying one or more of those appeals as a lead appeal or lead appeals and staying the other appeals (“related appeals”).

(3) When the commissioner makes a decision in respect of the common or related issues, the commissioner must send a copy of that decision to the appellants and respondents in the related appeals, and subject to paragraph (4), that decision is binding in any related appeal.

(4) Within 28 days after the date on which the commissioner sent a copy of the decision under paragraph (3), the appellant or respondent in any related appeal may apply in writing for a direction that the decision does not apply to and is not binding in that appeal.

(5) The commissioner must give directions in respect of related appeals providing for the disposal of, or further directions in, those appeals.

(6) If the lead case or lead cases are withdrawn before the commissioner makes a decision in respect of the common or related issues, the commissioner must give directions as to—

- (a) whether another appeal or appeals are to be specified as a lead case or lead cases; and
- (b) whether any direction affecting the related appeals should be set aside or amended.

Notices of appeal

8.—(1) An appellant may appeal to the commissioner by sending to the commissioner a notice of appeal to be received within 28 days of the date of the decision under appeal.

(2) The notice of appeal must include—

- (a) the name and address of the appellant;
- (b) the name and address of the appellant’s representative (if any);
- (c) the operator’s licence number if known;
- (d) an address or electronic address where documents for the appellant may be sent or delivered;
- (e) the name and address of the respondent;
- (f) details of the decision under appeal;
- (g) the decision the appellant is seeking; and
- (h) the grounds on which the appellant relies.

(3) The appellant must provide with the notice of appeal any written record of the decision under appeal and any statement of reasons for that decision that the appellant has or can reasonably obtain.

(4) A notice of appeal sent later than the time required by paragraph (1) must include a request for an extension of time and the reason why the notice of appeal was not provided in time.

(5) The commissioner may extend time for the notice of appeal to be received or may refuse to admit the notice of appeal.

(6) If the notice of appeal is admitted, the commissioner must send a copy of the notice of appeal and any accompanying documents to the respondent.

Response notice

9.—(1) The respondent must send to the commissioner a response notice to the notice of appeal to be received within 28 days of the date on which the commissioner sent the notice of appeal.

(2) The response notice must include—

- (a) the name and address of the respondent;
- (b) the name and address of the respondent's representative (if any);
- (c) an address or electronic address where documents for the respondent may be sent or delivered;
- (d) a statement as to whether the respondent opposes the appellant's case and if so, any grounds for such opposition.

(3) If the appellant did not provide a written record of the decision under appeal and a statement of reasons for that decision with the notice of appeal, the respondent must provide those documents with the response notice if the respondent has, or can reasonably obtain, them.

(4) If the respondent provides the response notice to the commissioner later than the time required by paragraph (1) or by any direction, the response must include a request for an extension of time and the reason why the response was provided out of time.

(5) The commissioner may extend time for the response notice or may refuse to admit the response notice.

(6) The commissioner must send a copy of the response notice and any accompanying documents to the appellant unless the commissioner has refused to admit the response notice under paragraph (5).

Appellant's reply

10.—(1) The appellant may make a written submission and provide further documents in reply to the response notice.

(2) Any reply and accompanying documents provided under paragraph (1) must be sent to the commissioner within 14 days of the date on which the commissioner sent the response notice to the appellant.

(3) If the appellant provides the reply to the commissioner later than the time required by paragraph (2), or by any direction, the reply must include a request for an extension of time and the reason why the reply was not provided in time.

(4) The commissioner may extend time for the reply or may refuse to admit the reply.

(5) The commissioner must send a copy of the reply and any accompanying documents to the respondent unless the commissioner has refused to admit the reply under paragraph (4).

Decision with or without a hearing

11.—(1) Subject to paragraphs (2) and (3), the commissioner must hold a hearing before making a decision which disposes of an appeal unless—

- (a) the appellant and respondent have both consented to the appeal being determined without a hearing; and
- (b) the commissioner is satisfied that the appeal can properly be determined without a hearing.

(2) The commissioner may dispose of an appeal without a hearing if striking out an appeal under regulation 3.

(3) If the commissioner holds a hearing to consider a preliminary issue and following disposal of that preliminary issue, no further issue remains to be determined, the commissioner may dispose of the appeal without holding any further hearing.

Entitlement to attend and take part in a hearing

12.—(1) The appellant and respondent to an appeal are entitled to attend any hearing that is held and to send written representations to the commissioner.

(2) The commissioner may give a direction permitting or requesting any person to attend and take part in a hearing, or to make written submissions, or both, in relation to a particular issue.

(3) The commissioner must send a copy of any written representations received to any other person entitled, permitted or requested to attend the hearing.

Notice of hearings

13.—(1) The commissioner must give each person entitled, permitted or requested to attend a hearing reasonable notice of the time and place of the hearing.

(2) The period of notice under paragraph (1) in relation to a hearing to consider disposal of an appeal must be at least 21 days except that the commissioner may give shorter notice—

- (a) with the consent of both the appellant and the respondent; or
- (b) in urgent or exceptional circumstances.

(3) A notice giving the details of the time and place of the hearing must be published in Notices and Proceedings before the hearing takes place.

(4) Nothing in paragraph (3) prevents the commissioner from postponing a hearing to a later date, but a notice giving the details of the revised time and place of the hearing must be published in Notices and Proceedings before any postponed hearing takes place.

Public and private hearings

14.—(1) Subject to the following paragraphs, all hearings are to be held in public.

(2) The commissioner may give a direction that a hearing or part of a hearing is to be held in private if satisfied that it is just and reasonable to do so by reason of—

- (a) the likelihood of disclosure of intimate personal or financial circumstances;
- (b) the likelihood of disclosure of commercially sensitive information, or information obtained in confidence; or
- (c) exceptional circumstances not falling within sub-paragraphs (a) or (b).

(3) The commissioner may determine who is permitted to attend a hearing or part of a hearing held in private.

(4) The commissioner may give a direction excluding from a hearing, or part of it, any person whose presence the commissioner considers disruptive or inappropriate.

Hearings in a person's absence

15. If a person entitled, permitted or requested to attend a hearing fails to attend the hearing, the commissioner may proceed with the hearing—

- (a) if the commissioner is satisfied that the person has been notified of the hearing or that reasonable steps have been taken to notify that person of the hearing; and
- (b) the commissioner considers that it is in the interests of justice to proceed with the hearing.

Procedure at a hearing

16.—(1) Except as is otherwise provided in this regulation, the commissioner may determine the procedure at a hearing.

(2) Subject to paragraph (4), a person entitled to appear at a hearing in accordance with regulation 12(1), is entitled to give evidence, call witnesses, cross examine witnesses and address the commissioner both on the evidence and generally on the subject matter of the hearing.

(3) The giving of evidence, the calling of witnesses, the cross-examination of witnesses and the making of addresses by other persons appearing at the hearing is at the commissioner's discretion.

(4) The commissioner may refuse to permit—

- (a) the giving or calling of evidence;
- (b) cross examination of persons giving evidence; or
- (c) the presentation of any other matter,

which the commissioner considers to be irrelevant, repetitious, frivolous or vexatious.

(5) The commissioner may from time to time adjourn a hearing for such period as the commissioner considers appropriate.

Decisions

17.—(1) The commissioner may give a decision orally at a hearing or may reserve the decision to be given in writing at a later date.

(2) The commissioner must send the appellant and respondent as soon as reasonably practicable after making a decision disposing of an appeal—

- (a) a decision notice stating the commissioner's decision and the reasons for the decision; and
- (b) notification of the right to appeal to the Upper Tribunal against the decision and the time within which and manner in which the right of appeal may be exercised.

(3) But the commissioner need not provide reasons for a decision which is made by consent of the parties.

(4) The commissioner must publish, as soon as reasonably practicable after making a decision disposing of an appeal, a notice containing details of that decision in Notices and Proceedings.

(5) The commissioner may at any time correct any clerical mistake or other accidental slip or omission in a decision by sending notification of the amended decision to the appellant and respondent and making any necessary amendment to any notice published under paragraph (4).

Signed by authority of the Secretary of State

Date

Name
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 123A of the Transport Act 2000 (“the 2000 Act”) (inserted by the Bus Services Act 2017) provides for franchising authorities to make franchising schemes relating to bus services in their area. Under such schemes, service permits may be granted to bus service providers and conditions may be attached to permits. Section 123T of the 2000 Act allows for appeals to a traffic commissioner against refusals, revocations or suspensions of service permits and in relation to any conditions.

Section 6D of the Transport Act 1985 (“the 1985 Act”) (inserted by the Bus Services Act 2017) provides for local transport authorities to operate enhanced partnership schemes in which those authorities may grant or vary registrations to providers of local bus services, and impose requirements in relation to such registrations. Section 6F of the 1985 Act allows for appeals to a traffic commissioner against refusals or cancellations of registrations and in relation to any requirements.

These regulations make provision for the procedure to be followed in relation to any appeals under those provisions.

Regulation 2 sets out the overriding objective to deal with appeals fairly and justly.

Regulation 3 enables the commissioner to determine the procedure to be followed and to issue directions.

Regulation 4 allows parties to appoint legal and other representatives to act in appeals.

Regulations 5 and 6 make provision in respect of service of documents.

Regulation 7 permits the traffic commissioner to make a decision on a lead case where two or more cases involve the same issues of fact or law.

Regulations 8 to 10 makes provision in respect of service of notices of appeal, responses and replies.

Regulations 11 to 17 make provision in respect of hearings and decisions.

An impact statement has not been prepared in relation to these Regulations since no impact on business or the voluntary sector is foreseen.