



Traffic Commissioners
for Great Britain

Senior Traffic Commissioner's Statutory Documents 2018 revisions

Formal consultation

July 2018

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Foreword

As Senior Traffic Commissioner, I have powers to issue guidance and general directions to the Traffic Commissioners for Great Britain (the Statutory Documents).

Without a framework, we would be in a position to not ensure consistent and fair regulation of the transport industry or to continue to modernise the licensing regime.

Few regulators are able to demonstrate the same level of transparency in their decision-making as that achieved through the publication of these Statutory Documents.

The Statutory Documents assist us in our decision-making but they also contain helpful information for operators, transport managers and drivers. The guidance shows them how traffic commissioners will view their applications and operations, which in turn should assist them to run their businesses compliantly.

For this consultation we have reviewed and made changes to a number of the Statutory Documents, to provide clearer guidance and to continue our aim for improved transparency in the way we come to our decisions. Many of the amendments recognise changes in the law and decisions made by the Upper Tribunal.

In order to help us in revising the documents, we would like to hear from industry and its representatives. We invite you to offer you thoughts and contributions on the changes we are considering making.

A handwritten signature in black ink, appearing to read 'R. Turfitt', written in a cursive style.

Richard Turfitt
Senior Traffic Commissioner for Great Britain

How to respond

The Senior Traffic Commissioner welcomes comments from stakeholders on the areas outlined on pages 7-11.

Respond to this consultation by email or post to:

Email

sstcconsultations@otc.gsi.gov.uk

Post

Andrew Wilkinson
Traffic Commissioners' Corporate Office
Hillcrest House
386 Harehills Lane
Leeds
LS9 6NF

The consultation will run from 16 July to 27 August 2018. Please ensure that your response reaches us before the closing date so that we can consider your comments.

With your response, please specify if you are responding as an individual or on behalf of an organisation, in which case please make it clear who the organisation represents and, where applicable, how the views of the members were assembled.

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Traffic Commissioners for Great Britain.

The traffic commissioners will process your personal data in accordance with data protection law.

Introduction

The Traffic Commissioners for Great Britain are independent specialist regulators. They are responsible for licensing and regulating commercial vehicle operators and regulating the conduct of professional drivers in the truck, bus and coach industries. They promote fair, efficient and reliable transport of goods and passengers.

As part of their strategic objectives, the traffic commissioners aim to deliver a modern, effective operator licence regime that ensures operators are fit to hold a licence whilst minimising the regulatory burden on the compliant.

When considering whether to grant operator licence applications traffic commissioners must apply the law. In ensuring that existing operators are compliant and safe, traffic commissioners carry out a balancing exercise, to assess the relevant risks.

The Senior Traffic Commissioner's Statutory Documents provide guidance and directions to assist with this work. They describe how commissioners apply the law and take a proportionate approach to exercise of their regulatory powers. They also indicate to operators, transport managers and drivers who are regulated by traffic commissioners, the approach that a traffic commissioner will adopt.

As case law changes, the documents need to be reviewed regularly. Meeting the expectations of the Regulators' Code and understanding how the documents might impact on industry is of great importance during this process.

Scope

Reviewing and updating the Statutory Documents means that traffic commissioners and the industry as a whole continue to have clear guidance on what is expected of traffic commissioners, operators, transport managers and drivers.

The following documents have been reviewed:

- good repute and fitness
- finance
- transport managers
- operating centres, stable establishment and addresses for service
- legal entities
- impounding
- delegations
- case management
- principles of decision making
- format of decisions
- appeals
- small PSV operations
- local bus services

Statutory Documents: 2018 revisions

History

In November 2016, the Traffic Commissioners for Great Britain, supported by the Driver and Vehicle Standards Agency (DVSA), launched improved digital services for goods and PSV operator licence holders on GOV.UK.

The introduction of this service – Vehicle and Operator Licensing (VOL) – led to a review of the Senior Traffic Commissioner’s Statutory Documents to clarify the requirements for applications which are submitted digitally. The Senior Traffic Commissioner consulted with the Department for Transport on the document revisions and received no substantive comments.

A number of documents were republished in September 2017.

Current position

The latest review, undertaken over the last few months, takes a wider view of the guidance and directions and they need to be updated.

The primary aim is to ensure that the documents reflect legal changes and incorporate recent decisions of the Upper Tribunal, with additional guidance, where appropriate.

Some of the documents contain new content and this is identified below.

Future reviews

A review of Statutory Document No 6 (Vocational Driver Conduct) will follow, with consideration also given to Statutory Document No 13 (Small Public Service Vehicle Operations) and Statutory Document No 14 (Local Bus Services).

Document Amendments

A list of the revised Statutory Documents and amended paragraphs/sections is provided below. Text highlighted in **yellow** denotes new content included in the guidance.

Document Number	Title	Amendments
1	Good Repute & Fitness	<i>Scope of good repute and fitness as a relevant consideration</i> Expansion of guidance to improve the description of fitness to assist applicants and operators understand the breadth of the term. An indicated starting point has also been provided and relevant instances when an operator or applicant should expect to provide this evidence. <i>Disqualified legal persons</i> Clarification the position of a disqualified legal person when re-entering the industry after the expiry of any disqualification and the impact of past events.

		<p><i>Failure to supply records/misleading the Upper Tribunal – likely effects on repute</i> Update to the position on the likely effect on an operator’s repute when there is a failure to supply records or when they are found to have misled the Upper Tribunal.</p> <p><i>Fronting</i> Stronger guidance to applicants where there are concerns over ‘fronting’.</p> <p><i>Incomplete applications</i> Emphasised the importance of applicants accurately completing application forms.</p> <p><i>Financial standing and fitness</i> Further clarification on the link between financial standing and fitness.</p>
2	Finance	<p><i>Ability to assess sources of funding</i> The ability of traffic commissioners to assess sources of funding for the purposes of financial standing and determine whether those funds are ‘truly available’.</p> <p><i>Period of grace – expiry</i> Guidance on Period of Graces and the obligation on the traffic commissioner when it expires had been updated.</p> <p><i>Reducing vehicle authorisation</i> Clarification on when an operator should seek a reduction when the requirements are not met.</p> <p><i>Value of assets</i> Clarification on the position of when the value of assets is being relied upon when they are not in fact disposable assets.</p>
3	Transport Managers	<p><i>Continuous and effective management - factors to be taken into account</i> The definition and requirement of transport managers has been improved by reflecting the factors that a traffic commissioner might reasonably take into consideration when deciding if there has been continuous and effective management.</p> <p><i>Period of grace – expiry</i> Guidance on Period of Graces and the obligation on the traffic commissioner when it expires has been updated.</p> <p><i>Disqualification – rehabilitative measures</i> The power to order a rehabilitation measure on disqualification has been further clarified.</p>

		<p><i>End of disqualification</i> The guidance on the position of good repute and professional competence at the end of a disqualification period has been augmented.</p>
4	Operating Centres, Stable Establishments and Addresses for Service	<p><i>Certificate of Lawful Use</i> The validity of a Certificate of Lawful Use has been clarified.</p> <p><i>Definition of vicinity</i> The 'definition' of vicinity has been updated.</p>
5	Legal Entities	<p><i>De facto directors – steps to be taken</i> The steps to be taken when there is evidence to suggest someone has acted as a de facto director have been set out.</p> <p><i>Self employed drivers</i> A section on employees has been added to incorporate HMRC's guidance on driver employment status.</p>
7	Impounding	<p><i>Reasonable steps</i> The guidance on the interpretation of 'all reasonable steps' has been updated.</p>
8	Delegations	<p><i>Case notes – telephone calls</i> The importance of case noting telephone calls has been emphasised.</p>
9	Case Management	<p><i>Non-legally qualified representatives</i> There has been a slight change in approach to non-legally qualified representatives to reflect the position in law.</p> <p><i>Period of grace – expiry</i> Guidance on Period of Graces and the obligation on the traffic commissioner when it expires had been updated.</p> <p><i>Tribunal users – support</i> A section has been added to improve the guidance to hearing impaired tribunal users and parties requiring a foreign language interpreter. Guidance on the parties who can request an adjournment has been updated.</p> <p><i>Recording of hearings</i> The position on the recording of hearings has been clarified.</p>
10	Principles of Decision Making	<p><i>Five year rule</i> The existence of a 'five-year rule' has been clarified.</p>

		<p><i>Surrender – refusal to accept</i> The power of the traffic commissioner to refuse to accept surrender of a licence has been updated.</p> <p><i>Definition of frivolous</i> The definition of ‘frivolous’ has been improved.</p> <p><i>Decision making process – steps to be undertaken</i> The steps to be undertaken as part of the decision making process have been clarified.</p> <p><i>Power to disqualify</i> The extent of the traffic commissioner’s power to order disqualification has been strengthened.</p> <p><i>Period of grace – expiry</i> The guidance on Period of Graces and the obligation on the traffic commissioner when it expires had been updated.</p> <p><i>Regulation (EC) 403/2016</i> Updated to include Regulation (EC) 403/2016.</p> <p>Starting points - applications New annex detailing suggested starting points for recommendations on applications, to sit with annex on starting points for regulatory action to improve consistency.</p>
11	Format of Decisions	<p><i>Written decisions</i> The section on when a written decision has been restructured to offer greater clarity and guidance when a written decision might be required.</p>
12	Appeals	<p><i>Fresh evidence - admission</i> Clarified the position regarding the admission of fresh evidence.</p> <p><i>Upper Tribunal – striking out appeals</i> Detailed the ability of the Upper Tribunal to strike out appeals.</p> <p><i>Appeals against Upper Tribunal decisions</i> Highlighted that Upper Tribunal appeals are heard by the Court of Appeal.</p>
13	Small PSV Operations	<p>Main occupation A section on main occupation has been added to improve the guidance and detail the types of evidence that may assist in demonstrating the requirement is met.</p>

		<p><i>Incomplete applications</i></p> <p>A section on incomplete applications has been added to clarify the position to applicants and include a costs provision.</p>
14	Local Bus Services in England (outside London) and Wales	<p><i>Local bus registration pre-notice period</i></p> <p>Updated to include Public Service Vehicles (Registrations of Local Services) (Amendment) Regulations 2018.</p>