



Department  
for Transport

# Consultation into making legislative changes to the operator licensing system

**Moving Britain Ahead**



April 2019

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# Foreword

This consultation document is seeking views on changing the rules to allow operators who meet certain conditions, to commence vehicle operations as soon as possible. Government is also seeking views on whether to create the power to introduce formal Tribunal Rules for the tribunal functions carried out by traffic commissioner.

Although many rules related to the operator licensing regime apply to the UK through its current membership of the European Union (EU), the changes being consulted about in this document will not be affected by the UK's exit from the EU.

There are 8 full time traffic commissioners in Great Britain appointed by the Secretary of State for Transport. They work at 'arm's length' from the Department for Transport and are responsible for the licensing operators of public service vehicles (buses and coaches) and large goods vehicles (over 3.5 tonnes gross plated weight). They also have responsibility for registering local bus services (outside of London) and to consider the conduct of drivers who hold or apply for licences to drive large goods and passenger carrying vehicles.

72% of the holders of PSV operator licences have five vehicles or less, delays in obtaining licences can be particularly discouraging to these small operators and may deter them from entering the market or even jeopardise the success of their business plan. By allowing operators to commence vehicle operations as soon as possible, it will assist business in providing essential public services and reduce risks to their business plans.

The overriding objective for the introduction of formal Tribunal Rules is to allow the traffic commissioners to deal with cases fairly and justly, clear defined formal rules brings certainty and will help operators understand and comply with directions issued by the traffic commissioners.

# Executive summary

## Introduction

- 1 There are 8 full time traffic commissioners in Great Britain appointed by the Secretary of State for Transport. They work at 'arm's length' from the Department for Transport and are responsible for the licensing of the operators of public service vehicles (buses and coaches) and large goods vehicles (over 3.5 tonnes gross plated weight). They also have responsibility for registering local bus services (outside of London) and to consider the conduct of drivers who hold or apply for licences to drive large goods and passenger carrying vehicles<sup>1</sup>.
- 1.1 In addition to granting and issuing operator licences traffic commissioners are responsible for taking regulatory action against holders or applicants for licences where there are concerns that they are failing to comply with the requirements to hold a licence. Regulatory action can include the refusal of applications or the revocation of existing licences and the disqualification of certain people involved in that business or the company itself.
- 1.2 When considering whether to take action against a non-compliant operator a traffic commissioner may hold a formal public inquiry or a preliminary hearing. When determining a case at an inquiry the traffic commissioner is acting in a judicial capacity and must ensure that the proceedings are fair and free from any unjustified interference or bias. There are around 1600 public inquiries held every year and around 500 preliminary hearings.
- 1.3 One of the serving traffic commissioners is also appointed to the statutory role of Senior Traffic Commissioner. The primary role of the Senior Traffic Commissioner is to provide guidance and directions to the traffic commissioners and to deploy traffic commissioners to carry out their functions. The current Senior Traffic Commissioner is Richard Turfitt who is based in the Eastern Traffic Area.

## Priorities

- 1.4 The traffic commissioners have the following shared priorities:
  - to ensure that people operating HGVs and PSVs are reputable, competent, and adequately funded;
  - to encourage all operators to adopt robust systems, so that there is fair competition and that the operation of goods and public service vehicles is safe;

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<sup>1</sup> The Traffic Commissioner for Scotland also has some devolved functions relating to taxi fare scale appeals and the appointment of Scottish Parking Adjudicators.

- to consider on behalf of the Secretary of State for Transport the fitness of drivers or those applying for passenger carrying vehicle or large goods vehicle driving licences based on their conduct;
- to consider, and where appropriate impose, traffic regulation conditions to prevent danger - to road users and/or reduce traffic congestion and/or pollution;
- to ensure public inquiry proceedings are fair and free from any unjustified interference or bias;
- to engage with stakeholders - listening to industry, meeting with local authorities, trade organisations, passenger groups and operators and presenting seminars.

#### Support staff

- 1.5 The traffic commissioners are supported in their functions by staff employed by the Driver and Vehicle Standards Agency. The majority of staff are based in the Licensing Office in Leeds where all applications are processed. There are a small number of staff based in the 7 regional traffic area offices supporting the traffic commissioners in the administration of public inquiries and vocational drivers.

#### Triennial Review

- 1.6 In April 2011, the Cabinet Office announced that all Non- Departmental Public Bodies (NDPBs) would be reviewed at least once every three years. This forms part of the wider Government agenda to ensure that it delivers its objectives as effectively and efficiently as possible, achieving the best possible value for taxpayers and the public.
- 1.7 In March 2015 the DfT carried out a Triennial Review of the Traffic Commissioners. The review was carried out in two phases.
- 1.8 Phase 1 of the review involved consideration of the continuing need for the traffic commissioner activities. It concluded that it is imperative to retain a number of the functions of the traffic commissioners. Phase 1 found the carrying out of the TCs regulatory and tribunal function is transparent and open. However, there could be opportunities for efficiencies and more coordinated approaches to be introduced.
- 1.9 Phase 2 of the review sought to investigate some of these issues through further discussion with all interested parties, consideration of relevant documentation and analysis of data. This part of the review involved a comprehensive consultation with industry and other stakeholders for their views of the traffic commissioner function and has provided a number of recommendations for the Department to take forward for consideration.<sup>2</sup>
- 1.10 The review concluded that the current system of traffic commissioners worked well and had a wide level of industry support.
- 1.11 The review also identified that the highest priorities for change are where they can bring benefits to business, including through faster services and better transaction times. In the short term the replacement in October 2016 of the computing systems used, and changes to procedures have led to a reduction in the target times for digital operator licensing transactions from an average of nine weeks to 7 weeks for

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<sup>2</sup> The Triennial Review can be found at;  
[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418268/Triennial\\_Review\\_of\\_the\\_Traffic\\_Commissioners.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418268/Triennial_Review_of_the_Traffic_Commissioners.pdf)

those applicants who can satisfy the traffic commissioner that they meet the necessary criteria.

- 1.12 In December 2015 the DfT published the Triennial Review Implementation Plan that set out the DfT's response to the recommendations made in the Triennial review. A number of other recommendations would require changes to regulations or primary legislation. These recommendations form the basis of this consultation and are set out in this document.
- 1.13 More information on the role of the traffic commissioners can be found [here](#).

This link provides access to the Traffic Commissioner Annual Reports and other publications.

A copy of the Triennial Review Implementation Plan of December 2015 can be found on [gov.uk](#).

The primary legislation that relates to operator licensing is:

The Goods Vehicles (Licensing of Operators) Act 1995;

The Public Passenger Vehicles Act 1981;

The Transport Act 1985.

# How to respond

Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found on [gov.uk](https://www.gov.uk) or you can contact Farhan Khan if you need alternative formats (Braille, audio CD, etc.).

If you wish to respond electronically, you can complete the [online survey](#).

If you wish to respond in writing, you can send consultation responses to:

Farhan Khan

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When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of 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 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 Department.

## Privacy Information Notice: Confidentiality and data protection

The Department for Transport (DfT) is carrying out this consultation to make legislative changes to the operator licensing system.

This consultation and the processing of personal data that it entails is necessary for the exercise of our functions as a government department. If your answers contain any information that allows you to be identified, DfT will, under data protection law, be the Controller for this information.

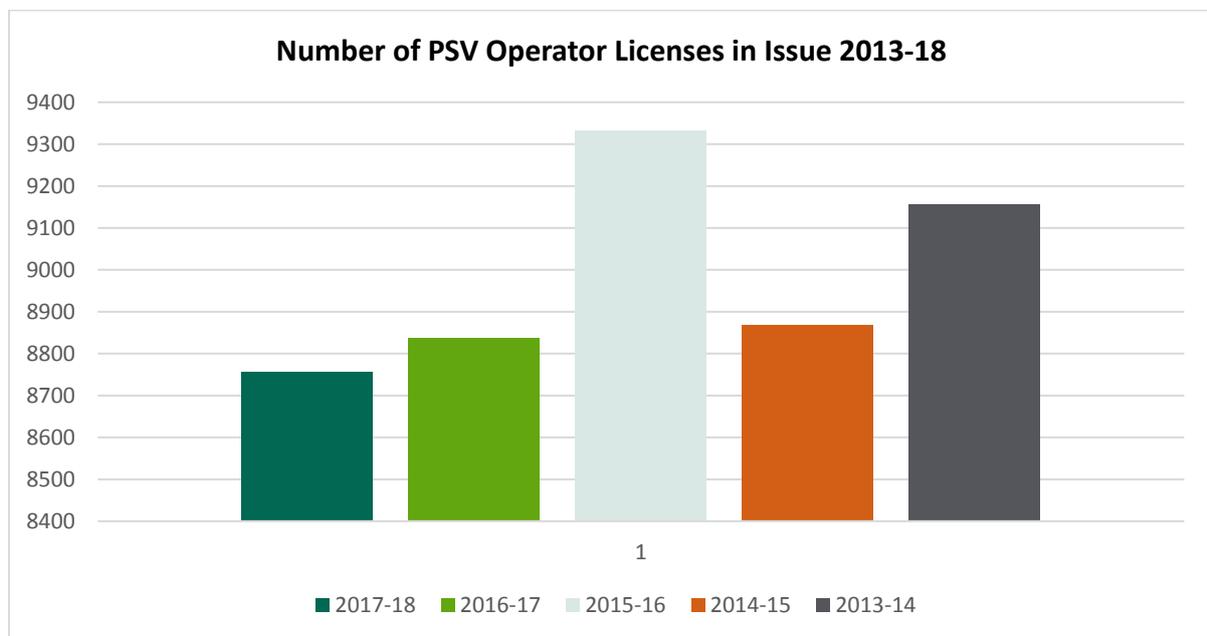
As part of this consultation we are asking for your name and email address. This is in case we need to ask you follow-up questions about any of your responses. You do not have to give us this personal information. If you do provide it, we will use it only for the purpose of asking follow-up questions.

Your information will not be shared, will be kept securely within DfT servers and destroyed within 18 months after the consultation has been completed.

The [Department for Transport's privacy policy](#) has more information about your rights in relation to your personal data, how to complain and how to contact the Data Protection Officer.

# 1. Consultation proposals – PSV Operator Licences

1.1 A business wishing to carry passengers operate public service vehicles (PSV) for hire or reward must hold a PSV operator’s licence issued by a traffic commissioner. Until a licence is granted an applicant is not permitted to operate any PSV. Table one shows the total number of PSV operator’s licences in issue as of 31 March 2018<sup>3</sup> was 8756.



**Figure 1 Number of PSV Operator Licences in issue 2018**

1.2 Traffic commissioners fulfil an important ‘gatekeeper’ role which necessitates a thorough scrutiny of each application. Before granting a PSV operator’s licence a traffic commissioner must be satisfied that an applicant meets the requirements as set out in the legislation<sup>4</sup>. These include satisfying the traffic commissioner that they are: of good repute; of the appropriate financial standing; professionally competent and have adequate arrangements in place to maintain vehicles in a fit and serviceable condition and to secure compliance with the requirements of laws relating to the driving and operation of vehicles.

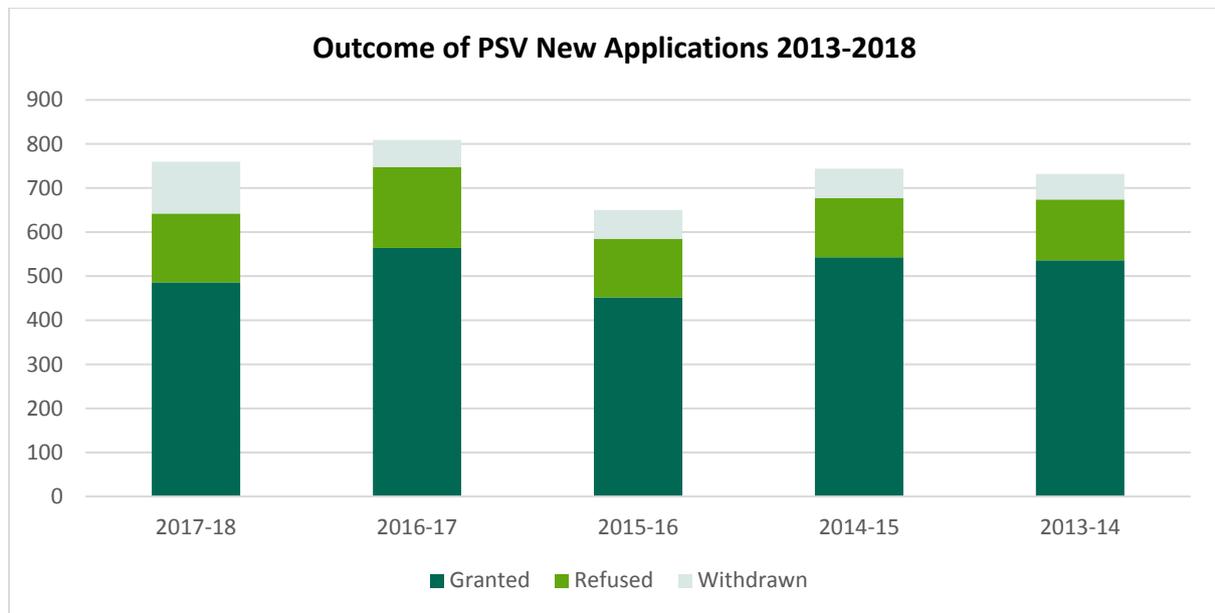
1.3 There is also a legislative requirement to publish notification of all applications for licences in a document entitled ‘Notices and Proceedings’. This allows a 21 day

<sup>3</sup> Source - Traffic Commissioner Annual Report 2017-2018

<sup>4</sup> The requirements are set out in section 14ZA-14ZC of the Public Passenger Vehicles Act 1981

period for statutory objectors<sup>5</sup> to lodge a formal objection against the grant of a licence. Applications cannot be determined until the expiry of this 21 day period.

- 1.4 The consideration of applications can also be delayed as a result of applicants providing incomplete details at the time of making the application. This information could be significant or relatively minor in nature. However, an application cannot be considered until all information required to satisfy the traffic commissioner that the applicant meets the criteria has been received.
- 1.5 As a result of these considerations and depending on the complexity of an individual application the overall process could take much longer than the nine week target time. Where a public inquiry is required to determine an application the expected processing time for an application is at least 20 weeks.
- 1.6 The average processing time for PSV applications is (not requiring public inquiries) for the reporting year 2017-18 was an average of 50.6 working days. Table Two shows the number and outcome of applications processed in 2013-2018 for new PSV operator's licences.



**Figure 2 Outcome of PSV applications for a new operator's licence**

- 1.7 During the application period applicants are advised not to bid for contracts and they are not able to register local bus services. This could place a significant burden on an applicant, particularly if it coincides with the issue of tenders from Local Authorities. It can also delay the introduction of new bus services serving the local communities.
- 1.8 It is a major challenge, when operators (particularly smaller operators) seek to enter a market following the exit of a competitor. Additionally, where a service ceases due to insolvency or simply a lack of profitability, smaller operators are likely to be those, particularly in rural areas to fill the need. Being able to start a service earlier, benefits not only businesses, but also lesser served communities.

<sup>5</sup> Section 14A of the Public Passenger Vehicles Act 1981 – Statutory objectors are any chief officer of the police or a local authority. Objections can be made on the grounds that any requirement to hold a licence is not satisfied

1.9 The Government wishes to consider ways to assist business by allowing operators to commence vehicle operations as soon as possible. 72% of the holders of PSV operator licences have five vehicles or less. Delays in obtaining licences can be particularly discouraging to these smaller operators and may deter them from entering the market or jeopardise the success of their business plan. Table three shows the percentage of PSV operators by fleet size.

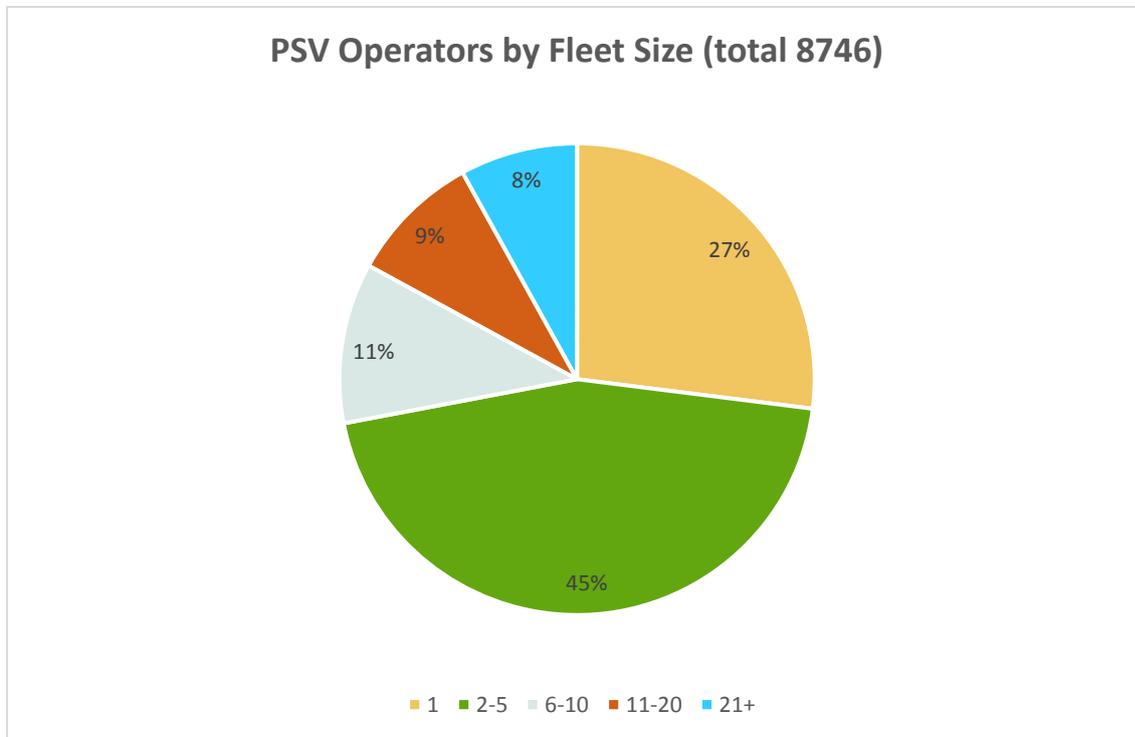


Figure 3 Percentage of PSV operators by fleet size

**Q.1 Do you agree with changing PSV operator licence procedures so that applicants can have operational approval at the earliest opportunity (subject to normal safeguards)? If No, options list**

1.10 The options under consideration to reduce PSV processing times are:

Option 1 No change, make no change to the primary legislation.

Option 2 Provisional licence

Amend the Public Service Vehicles (Operators' Licences) Regulations 1995 to allow a traffic commissioner the authority to attach a condition to a licence limiting the time that the licence is valid. This would have the effect of granting a licence on a conditional basis whilst further checks are carried out.

Interim licence

Option 3 Introduce legislative change to allow the issue of interim licences to enable some applicants for PSV operator licences to apply for temporary authority to operate on making their full application for a licence.

- Option 4 Consider methods to reduce processing times through other legislative change. This option could include the removal of the statutory right of specified bodies to object to an application for a PSV operator's licence enabling applications to be considered once all the information is available.
- Option 5 Consider other methods to reduce processing times through non-legislative measures. This could involve increasing the staff resource employed in the function or lowering the level of scrutiny each applicant undergoes.

## Preferred Option

- 1.11 The Government's preference is Option 2. In this option a traffic commissioner could consider granting an application once s/he is satisfied that the applicant meets the prima facie requirement to hold a licence, subject to further investigation or the expiry of the period for objections.
- 1.12 The grant would be subject to a condition that limits the validity of a licence to a specified date to allow for these checks to be completed. Prior to this date the traffic commissioner could either:
- a) remove the condition effectively granting a full licence;
  - b) vary the licence condition to a date in the future to allow for the completion of checks;
  - c) allow the time period to lapse effectively removing the right for the applicant to operate vehicles.
- 1.13 This option is considered to achieve the objective of enabling applicants to commence operations earlier whilst still maintaining a thorough vetting process for applicants into the industry. It also allows a facility to react quickly to prevent an applicant from continuing to operate should a traffic commissioner have concerns on the completion of the full application checks, e.g. should an objection be received or further evidence put before the traffic commissioner.
- 1.14 Powers to implement this proposal could be obtained by using existing powers set out in section 16 (3) of the Public Passenger Vehicles Act 1981. This section empowers a traffic commissioner to attach such conditions as s/he considers fit for restricting or regulating the use of vehicles under the licence. This proposal would require a change to the secondary legislation that sets out the prescribed conditions<sup>6</sup>.

## Alternative Option

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<sup>6</sup> See Regulation 7 of The Public Service Vehicles (Operators' Licences) Regulations 1995

- 1.15 An alternative option that would also achieve the objective is to introduce a change to the primary legislation to allow a traffic commissioner to grant an interim operator's licence to an applicant whilst their full application is under consideration.
- 1.16 The legislation relevant to applicants for a goods vehicle operator's licence already allows for the issuing of interim licences<sup>7</sup>. This option would introduce similar legislation into the Public Passenger Vehicles Act 1981 for applicants for PSV operator licences.
- 1.17 An interim licence is issued to applicants whilst a decision on their application is under consideration. An interim licence gives the applicant the authority to operate as if their application had been granted, although a traffic commissioner may grant an interim at lesser terms than those applied for. An example of this may be granting it for fewer vehicles than applied for.
- 1.18 An interim licence is regarded as a separate licence and it can be revoked or suspended if the holder fails to comply with the requirements to hold a licence.
- 1.19 An interim licence can only be issued on the authority and at the discretion of a traffic commissioner. One can only be issued if a traffic commissioner is satisfied, on the evidence before him/her at the time that the applicant meets the requirement for a PSV operator's licence. This initial consideration could be made before the expiry of the statutory period for objections.
- 1.20 Existing licence holders who lodge an application to increase the number of vehicles authorised could also apply for interim authority. In these cases, the authority would be referred to as an interim direction but the effect is the same.
- 1.21 Processing times for applications are often extended due to the failure of the applicant to provide all the required information. Often the outstanding information is relatively minor but prevents the traffic commissioner from granting the application, e.g. confirmation of the number of parking places available at the operating centre. Although it would not be appropriate to grant a full licence until all the required information has been received, it would be possible for a traffic commissioner to grant an interim licence if only relatively minor documentation is outstanding, this would allow the applicant to commence operations whilst they gather together any remaining outstanding information.
- 1.22 Similarly, if a traffic commissioner requires further investigations to be carried out before granting an application, s/he may consider an application for an interim in certain circumstances whilst the investigations are being carried out.
- 1.23 The administrative costs associated with processing an interim licence is met by the applicant. As of 1 April 2018, that cost is currently set at £68 for goods vehicle licence applicants.
- 1.24 An interim licence would remain in force until the application is finally disposed of or until it was revoked by the traffic commissioner for regulatory reasons. Whilst in force the applicant would have to abide by the terms of the interim licence and would be able to operate PSVs as if they had been granted a full licence.

## **Consideration of other options**

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<sup>7</sup> See section 24-25 of the Goods Vehicles (Licensing of Operators) Act 1995

- 1.25 Option 1 is not the preferred option as it is considered that PSV operators should be given the opportunity to commence operations as early as possible. This has benefits to the operator, the economy and the travelling public through accessible transport.
- 1.26 Options 4 and 5 are not preferred as any reduction in scrutiny impacts upon the traffic commissioners 'gatekeeper' role and may encourage non-compliant operators to enter the industry, thereby increasing the risk to road safety. The costs associated with increasing staffing levels would be borne by applicants and will not necessarily reduce the time taken to consider applications due to other legislative constraints and considerations.

**Q2. Do you agree with our proposal to implement Option 2? If No, your preferred option is?**

### **Variations to licences**

- 1.27 An operator wishing to vary their existing operator's licence are required to lodge an application with the traffic commissioner. The current legislation does not require these variations to be published in the 'Notices and Proceedings' until a final determination on the application has been made. The effect of this is that it allows an application to be granted once the traffic commissioner is satisfied that the requirements are met.
- 1.28 Although it may be possible to grant an application relatively quickly, the traffic commissioner may request that the Driver and Vehicle Standards Agency conduct a maintenance investigation to check that there are satisfactory arrangements to ensure compliance, especially when the variation is to increase the number of vehicles. This increases the time taken to determine applications.
- 1.29 Either option 2 or 3 would enable authority to be given to an operator to commence operating the additional vehicles stated in the variation application during the interim period whilst the application is being considered. The proposal is to introduce the same option for both new and variation applications.

## 2. Formal Tribunal Rules

### Background

- 2.1 A stakeholder recommendation<sup>8</sup> of the Triennial Review into the traffic commissioners was to consider whether to introduce Tribunal Rules to formalise the processes leading up to and at a public inquiry. In the Triennial Review Implementation Plan the DfT proposed to work on the introduction of formal Tribunal Rules<sup>9</sup>. Following this recommendation, the Government now wishes to consult on whether to create the power to introduce formal Tribunal Rules for the tribunal functions carried out by traffic commissioner.
- 2.2 The majority of tribunals have adopted formal rules for the management of the cases before them. The Upper Tribunal who preside over appeals relating to traffic commissioner functions have rules<sup>10</sup> and similar inquisitorial tribunals such as the Coroners also have formal rules<sup>11</sup>. Although rules are usually set out in secondary legislation it would require a change to the primary legislation to introduce the powers.
- 2.3 The overriding objective for the introduction of rules would be to enable the traffic commissioners to deal with cases fairly and justly. This includes —
  - a. dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
  - b. avoiding unnecessary formality and seeking flexibility in the proceedings;
  - c. ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
  - d. using the special expertise of the traffic commissioners effectively; and
  - e. avoiding delay, so far as compatible with proper consideration of the issues.
- 2.4 Figure 4 shows the numbers of completed public inquiries during the period 2013 and 2018.

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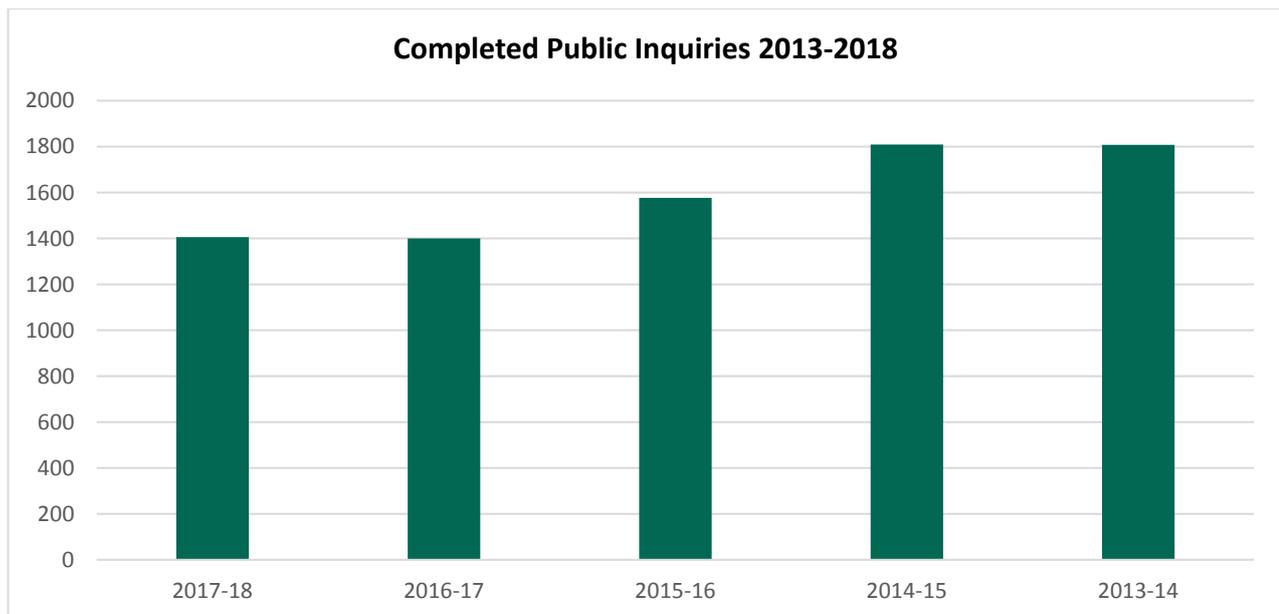
<sup>8</sup> See Stakeholder Recommendation 15 on page 75 of the Triennial Review of the Traffic Commissioners

<sup>9</sup> See paragraphs 4.7 – 4.9 of the Triennial Review Implementation Plan at;

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/487375/triennial-review-implementation-plan.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/487375/triennial-review-implementation-plan.pdf)

<sup>10</sup> The Tribunal Procedure (Upper Tribunal) Rules 2008

<sup>11</sup> The Coroners (Inquests) Rules 2013



**Figure 4 Completed Public Inquiries 2013 - 2018**

## Senior Traffic Commissioner Statutory Guidance and Statutory Directions

- 2.5 The Senior Traffic Commissioner (STC) may currently give traffic commissioners guidance or general directions as to the exercise of their functions<sup>12</sup>. In this regard the Senior Traffic Commissioner has issued Statutory Guidance and Statutory Directions<sup>13</sup> (Statutory Documents) covering requirements to hold a licence and certain functions.
- 2.6 These Statutory Documents are intended to provide a consistent basis for decision making and case management. They have been developed with regard to the Regulator's Code.<sup>14</sup> Although the Statutory Documents are provided for traffic commissioners and staff supporting them, they offer a useful reference point for operators, transport managers and those who represent them.
- 2.7 There are currently 14 separate Statutory Documents. Each document covers the subject matter in detail and references the legislation and case law. The complexity of the documents can make them difficult to understand by lay people who use them as reference material.
- 2.8 It was referenced in the Triennial Review report that the Statutory Documents do not have sufficient standing to ensure the effective operation of the inquiry process and also offer no potential to impose costs against parties who fail to conduct themselves properly.<sup>15</sup>

<sup>12</sup> Section 4C of the Public Passenger Vehicles Act 1981

<sup>13</sup> [www.gov.uk/government/collections/senior-traffic-commissioners-statutory-guidance-and-statutory-directions](http://www.gov.uk/government/collections/senior-traffic-commissioners-statutory-guidance-and-statutory-directions)

<sup>14</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf). The Regulator's Code was laid before Parliament in accordance with section 23 of the Legislative and Regulatory Reform Act 2006. Regulators whose functions are specified by order under section 24(2) of the Act must have regard to the code when developing policies and operational procedures that guide their regulatory activities.

<sup>15</sup> See paragraph 18.14 – Stakeholder Recommendation 15 of the Triennial Review

## Benefits of Tribunal Rules

- 2.9 The introduction of Tribunal Rules would negate the need for overly complicated Statutory Documents and would assist in making the tribunal more accessible. The majority of applicants or operators who appear before traffic commissioners are not represented so it is the Government's belief that simpler rules will make it easier for those appearing before a traffic commissioner to understand the process and improve their ability to successfully articulate their case to the traffic commissioner.
- 2.10 The certainty provided by clearer rules would assist participants to improve compliance with the directions issued by a traffic commissioner. It was noted in the Triennial Review Implementation Plan that it is not uncommon for inquiries to be adjourned or cancelled at the last minute due to the late arrival of additional information. This places additional burdens on traffic commissioners and the resources available to them.
- 2.11 Compliance with rules that stipulate a deadline for the receipt of the information would assist in ensuring that more cases were dealt with at first listing. The effect of this would be to reduce listing lead times for all operators. This benefits applicants for licences as the overall time taken from receipt of application to determination will be reduced. Reducing lead times for public inquiries would also benefit those operators called on regulatory grounds as the quick resolution of cases would assist their business planning activity and ensure that the serially and seriously non-compliant operators are brought before a traffic commissioner at the earliest opportunity.
- 2.12 The primary roles of the traffic commissioners are to ensure road safety and maintain 'a level playing field' for operators. Adjournments that are given to operators who have failed to comply with the directions of a traffic commissioner may result in an increased risk to road safety if they are operating vehicles that are unsafe or in an unsafe manner and can give them an advantage over compliant operators. The introduction of clear Tribunal Rules would provide greater protection for a traffic commissioner who takes early action against a non-compliant operator from successful appeals to the Upper Tribunal. When considering an appeal, the Upper Tribunal would take into account any directions given to a participant ahead of the hearing.
- 2.13 There is also a financial cost to the tribunal of adjourning cases which is ultimately borne by all operators through the fees charged for operator licensing. The cost of an adjournment varies according to each individual case but it would be a minimum of £500 per case taking into account the time lost by the traffic commissioner and staff. Formal Tribunal Rules could include provision to enable the traffic commissioners to levy charges for costs incurred as a result of operators failing to provide documents leading to the adjournment of cases. The proceeds could then be used for service improvement. The possibility of incurring a financial cost is expected to act as an effective deterrent and encourage operators to ensure compliance with the rules.

**Q3. Do you agree that introducing formal tribunal rules will be beneficial to the Traffic Commissioner's tribunal functions? If No, you are against tribunal rules introduction because?**

## **Potential areas that Tribunal Rules may cover**

2.14 The introduction of Tribunal Rules would provide support to the existing Statutory Documents for the tribunal function of the traffic commissioners. These functions primarily include public inquiries and the associated processes.

### Case management

2.15 The Senior Traffic Commissioner has issued Statutory Guidance and Statutory Directions (Statutory Documents) on case management. However, as recognised during the Triennial Review the Statutory Documents do not have sufficient standing in law to allow the tribunal to achieve the overriding objectives of the Statutory Documents. The introduction of Tribunal Rules would allow the tribunal to act more effectively as a case manager.

2.16 Tribunal Rules would provide case management powers to a traffic commissioner to determine the procedure to be adopted in a case. These could include the following areas;

### Dispensing of Directions

2.17 Traffic commissioner will currently issue directions to participants at public inquiry for case management purposes and to ensure the effective use of the tribunal time. This may include the requirement to produce documents at least 7 days before the date of the public inquiry. Participants often fail to meet the deadlines and bring productions on the day of the inquiry. This results in either longer public inquiries whilst the productions are examined on tribunal time or cases being adjourned due to the number of documents produced. The introduction of Tribunal Rules would enable the traffic commissioner to strike out applications where directions have not been complied with. The ability to strike out applications would incentivise participants to comply with directions and help maximise the effectiveness of the tribunal.

### Submission of evidence / productions

2.18 Participants of a public inquiry may be required to deliver documents to the tribunal or other participants. Tribunal Rules could be used to set out the accepted methods for sending or receiving documents and the method of calculating time, for example, documents to be received before 1700 hours on a stated date. The rules could also include the requirement for the party sending documents to send them to other parties as this would ensure that relevant material is shared with all participants without the tribunal acting as a 'post box' for documents.

### Attendance of witnesses

2.19 Traffic commissioners will often receive written evidence from public officials, such as vehicle or traffic examiners employed by the Driver and Vehicle Standards Agency.

In order to save the public from the expense of unnecessarily calling witnesses to give evidence at public inquiries, the traffic commissioner will request that operators indicate in advance of the hearing whether or not they accept the evidence and require the witness to attend the public inquiry. Despite this an operator will often attempt to delay public inquiries by making a late request for witnesses to attend or challenging the evidence despite not previously requesting a witness's attendance. This can delay a public inquiry and lead to cases being adjourned preventing the effective use of resources and potentially increasing the risk to road safety as non-compliant operators are able to operate longer before the conclusion of the case against them. Tribunal Rules could provide certainty to all parties of the timeframes for which notification for witnesses must be made and any failure to comply strengthens the ability of the traffic commissioner to proceed in absence.

### Procedures at a hearing

2.20 The rules could be used to formalise the proceedings adopted at the hearing. This would include elements such as the rights for a person to be represented at a hearing, how a traffic commissioner's decision will be given and the circumstances when a case will be heard in the absence of the parties.

### Delegation to staff

2.21 The Tribunal Rules could establish the parameters for staff to carry out functions on behalf of the traffic commissioners. The Tribunal Procedure (Upper Tribunal) Rules 2008 allow the Senior President of Tribunals to approve the delegation to staff allowing them to carry out functions of a judicial nature. The introduction of Tribunal Rules may allow for a similar arrangement within clearly defined functions allowing for a more effective use of traffic commissioner resource.

### Periods of grace

2.22 If an operator cannot meet the requirements to have an effective and stable establishment, to be professionally competent or to have the appropriate financial standing a traffic commissioner shall direct that the operator's licence be revoked. Before revoking a licence, the traffic commissioner must give an operator the opportunity to request a public inquiry. There is also an opportunity for an operator to apply to a traffic commissioner for a period of grace to enable the position to be rectified.

2.23 The Office of the Traffic Commissioner has reported that operators have requested public inquiries to delay the revocation of a licence only to comply with the requirements on the days leading up to the inquiry. Under such circumstances the public inquiry is likely to be vacated leaving a void in the scheduling of cases and lost administrative effort. Tribunal Rules could be developed to remove or reduce this situation from occurring.

### Orders for expenses and/or costs

- 2.24 The Public Service Vehicles (Traffic Commissioners: Publication and Inquiries) Regulations 1986 makes provision for a traffic commissioner to make an order for costs against a PSV operator or applicant in limited circumstances. These circumstances are that the party has been responsible for frivolous, vexatious, improper or unreasonable conduct in relation to the inquiry. The maximum award for costs is set in the legislation as £125 for each day of the inquiry.
- 2.25 The introduction of Tribunal Rules would allow for the extension of this power to operators and applicants of goods vehicles and would seek to create a clear framework in the circumstances that it could be applied and the recourse available to a recipient of a costs or expenses order.
- 2.26 The ability for a traffic commissioner to order expenses or costs would ensure that participants in a public inquiry are incentivised to fully comply with the running of the tribunal, maximising its efficiency and effectiveness.

#### **Q4. What you would like to see covered in formal Tribunal Rules?**

- **Case management?**
- **Dispensing of directions?**
- **Submission of evidence and productions?**
- **Attendance of witnesses?**
- **Procedures at hearings?**
- **Delegation of work to staff?**
- **Periods of grace?**
- **Orders for expenses?**
- **Orders for costs?**
- **Other?**

# What will happen next?

A summary of responses, including the next steps, will be [published](#) within three months of the consultation closing. Paper copies will be available on request.

If you have questions about this consultation please contact:

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# Annex A: Full list of consultation questions

## **PSV Operator Licences**

### **Question 1**

Do you agree with changing PSV operator licence procedures so that applicants can have operational approval at the earliest opportunity (subject to normal safeguards)?

### **Question 2**

Do you agree with our proposal to implement Option 2? If No, your preferred option is?

## **Formal Tribunal rules**

### **Question 3**

Do you agree that introducing formal Tribunal Rules will be beneficial to the Traffic Commissioners tribunal function?

### **Question 4**

What would you like to see covered in formal Tribunal Rules?

## Annex B: Consultation principles

The consultation is being conducted in line with the Government's key consultation principles. Further information is available at

<https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any comments about the consultation process please contact:

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