



# SENIOR TRAFFIC COMMISSIONER

Statutory Document No. 0

## INTRODUCTION TO OPERATOR LICENSING, THE STATUTORY GUIDANCE AND STATUTORY DIRECTIONS

This document is issued pursuant to section 4C of the Public Passenger Vehicles Act 1981 (as amended). Representative organisations have been consulted in accordance with that provision.

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Senior Traffic Commissioner

## GUIDANCE

1. The Senior Traffic Commissioner for Great Britain issues the following Guidance under section 4C(1) of the Public Passenger Vehicles Act 1981 (“1981 Act”) and by reference to section 1(2) of the Goods Vehicles (Licensing of Operators) Act 1995 (“1995 Act”) to provide information as to the way in which the Senior Traffic Commissioner believes that traffic commissioners should interpret the law relating to the application of the Statutory Documents. This Guidance may be subject to decisions of the higher courts and to subsequent legislation.

### **Goods Vehicle Legislation: The Goods Vehicles (Licensing of Operators) Act 1995**

2. It is unlawful in Great Britain to use a goods vehicle on a road, for the carriage of goods, either for hire or reward or in connection with any trade or business carried out by the user, without holding an operator’s licence, unless permitted to do so by a legal exemption.
3. A licence issued under section 2(1) of the 1995 Act is regarded as an operator’s licence as confirmed by section 58. Section 58 relies on this definition when interpreting two categories of operator’s licence:

“heavy goods vehicle licence” refers to an operator’s licence that authorises the use of one or more heavy goods vehicles (whether or not it also authorises the use of one or more light goods vehicles);

“light goods vehicle licence” refers to an operator’s licence that authorises the use of only one or more light goods vehicles.

4. Operators are advised<sup>1</sup> that a licence authorises the maximum number of vehicles and, if applicable, trailers. The number of vehicles applied for should include the number required for use as well as any margin to cover an increase in business or emergencies such as breakdowns. A vehicle, which is utilised as a commercial vehicle for the carriage of goods for hire or reward or in connection with any trade or business, may require authority, even if it is not actually being physically driven at the time.
5. Under section 5(1) of the 1995 Act, vehicles (whether specified on the licence or not) and trailers authorised to be used under an operator’s licence are those in the lawful possession of the licence-holder. It therefore follows that there is no authority to operate trailers where the licence does not specifically authorise the use of trailers. The Upper Tribunal has stated that being in possession of a fleet of vehicles in excess of the licence authorisation and then drawing down vehicles to use as and when required, may undermine at least two of the core requirements of the regulatory regime, namely those which relate to the availability of finance required to maintain relevant vehicles and to have an operating centre(s) with the required capacity.<sup>2</sup>

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<sup>1</sup> [www.gov.uk/guidance/goods-vehicle-operator-licensing-guide](http://www.gov.uk/guidance/goods-vehicle-operator-licensing-guide)

<sup>2</sup> [2021/2165 Connor Construction \(South West\) Ltd](#)

6. The Upper Tribunal has confirmed that the repeated switching of vehicles, with the intention of using them for only short periods of time, is not an appropriate way for an operator to conduct its business. Section 5(6) requires that a relevant vehicle must be specified on the operator's licence within one month that the licence came into force, or the vehicle first came into the lawful possession of the operator. As per regulation 23 of the Goods Vehicles (Licensing of Operators) Regulations 1995, that vehicle will then be issued with a disc, which must be fixed to the vehicle throughout the time that the vehicle throughout the time it is specified on the licence record, irrespective of whether it is being driven. So, if a vehicle has only been removed from the licence temporarily and it remains an integral part of the business, it does not cease to be used and therefore must be specified.
7. The question therefore arises as to how an operator might demonstrate that the removal of vehicles is more than temporary. The Senior Traffic Commissioner has adopted the dictionary definition of temporary, meaning to last only for a limited time, and that this is to be applied so as to ensure that the requirements for available finance to support compliance and for an operating centre with sufficient capacity are still met.
8. A Statutory Off Road Notification (SORN) is required when an operator takes a vehicle 'off the road' and thereby can avoid Vehicle Excise Duty (VED) and the need to insure it. It may also be exempt from the HGV road user levy (heavy goods vehicles of 12 tonnes or more).<sup>3</sup> A SORN is required whenever a vehicle is not taxed, not insured or is to be broken down for parts before being scrapped. On notification, the registered keeper will automatically receive a VED refund. The vehicle can then only be used on a public road to go to or from a pre-booked MOT or other testing appointment. Where a vehicle is found to be used when the subject of a SORN, the operator could face prosecution and a financial penalty.<sup>4</sup> In interpreting the legislation and case law, the Senior Traffic Commissioner has concluded that a vehicle which is the subject of a SORN does not require authority on the operator's licence, although it may still be relevant to the capacity of the operating centre if stored at those premises.

## Type of Licence

9. The type of licence required depends on the type of use. Under section 3(2) of the 1995 Act the use of a goods vehicle on a road for the carriage of goods either:
  - for hire or reward; or
  - in connection with any trade or business,requires a standard operator's licence, unless covered by a legal exemption.
10. Under section 3(3) of the 1995 Act the use of a goods vehicle on a road for the carriage of goods that is solely for or in connection with any trade or business, other than that of carrying goods for hire or reward, requires a restricted operator's licence (unless covered by a legal exemption).

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<sup>3</sup> Currently suspended until 31 July 2023

<sup>4</sup> See Statutory Guidance and Statutory Directions on Good Repute

## Heavy Goods Vehicles

11. Section 2(1) of the 1995 Act provides that no person shall use a goods vehicle on a road for the carriage of goods:
  - a) for hire or reward; or
  - b) for or in connection with any trade or business carried on by him, except under a licence issued by this Act.
12. Section 58 defines “goods vehicle” as a motor vehicle constructed or adapted for use for the carriage of goods, or a trailer so constructed or adapted; “carriage of goods” includes the haulage of goods and “goods” includes goods or burden of any description.
13. Section 5(6) of the 1995 Act states that unless specifically permitted a vehicle which is not specified after a period of a month beginning with the day on which the vehicle was first in the operator’s lawful possession or, if later, the day on which the licence came into force is not authorised to be used under that operator’s licence.
14. Regulation 33 and Schedule 3 to the Goods Vehicles (Licensing of Operators) Regulations 1995 sets out the classes of vehicle for which an operator’s licence is not required (see Annex 2).<sup>5</sup> Any use, seeking to benefit from one of the exemptions, must fall exclusively within the exemption. Any operation outside of an exemption requires an operator’s licence no matter how short the period.
15. There are a number of other exemptions that enable an operator, established in Northern Ireland<sup>6</sup> or in EU Member States, to use a goods vehicle for hire or reward, in Great Britain, without contravening section 2.<sup>7</sup>
16. Article 8(2) of Regulation (EC) No 1072/2009 defines the extent to which non-resident carriers from EU Member States are permitted to operate national road haulage services (i.e. cabotage). Cabotage operations must be completed within the seven days following the last unloading of an incoming international journey and using the same tractor unit. Where a foreign based haulier applies for an operator’s licence in Great Britain that haulier will become a ‘resident carrier’<sup>8</sup> and subject to the ongoing obligations to comply with domestic law.
17. Section 262 of the Transport Act 2000 introduced Schedule 1A into the 1995 Act, so that any laden goods vehicle operating on a public road for the carriage of goods (either for hire or reward or in connection with any trade or business) without the authority of a goods vehicle operator’s licence, can be detained.<sup>9</sup>

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<sup>5</sup> The difficulty in determining the exemptions is illustrated in [R \(on the application of VOSA\) v William Raymond Kayes \[2012\] EWHC 1498 \(Admin\)](#), in relation to a "showman's goods vehicle"

<sup>6</sup> Goods Vehicles (Licensing of Operators) (Exemptions and Modifications) (Amendment) Regulations 2023

<sup>7</sup> The Department for Transport has published guidance on the use of dual registered vehicles for specialist events hauliers - <https://www.gov.uk/guidance/dual-registration-for-specialist-events-hauliers>

<sup>8</sup> [2000/063 Reids Transport Co Ltd](#)

<sup>9</sup> See Statutory Guidance and Statutory Directions on Impounding

## Light Goods Vehicles

18. As part of the obligations under the UK/EU Trade and Co-operation Agreement, the UK was obliged to implement changes to operator licensing so that UK goods operators continue to enjoy commercial access to EU markets. Part of these changes<sup>10</sup> extended goods vehicle operator licensing regimes in Great Britain and Northern Ireland to cover light goods vehicles. This included vehicles, such as vans or pick-up trucks, which weigh more than 2.5 tonnes and up to 3.5 tonnes in maximum laden weight<sup>11</sup> (either alone, or combined weight when used with a trailer) and which operate internationally, for hire or reward.
19. Operators that fall within this category will be required to hold a standard international licence and meet most of the same requirements as those that operate heavy goods vehicles. One of the mandatory requirements is to engage a transport manager who is of good repute and professionally competent. The Secretary of State can grant temporary exemptions from the requirement for transport managers to hold a Certificate of Professional Competence to individuals who can demonstrate they have been managing light goods vehicle fleets for a continuous period of at least 10 years prior to 20 August 2020.<sup>12</sup>
20. The operating centre and advertising requirements do not apply in the same way to operators which exclusively run light goods vehicles.<sup>13</sup> Operators of light goods vehicles are required to meet different levels of financial standing.<sup>14</sup>
21. The amendment to the current legislative framework does not affect LGVs used exclusively within the UK, or those which are not used within the UK or internationally for hire or reward (e.g. vans used by tradespersons such as plumbers or electricians transporting only their own tools).
22. Schedule 1A into the 1995 Act applies to vehicles used without authority of an operator's licence.

## Passenger Carrying Vehicles Legislation: The Public Passenger Vehicles Act 1981

23. Section 12(1) of the 1981 Act provides that a public service vehicle shall not be used on a road for carrying passengers for hire or reward except under a Public Service Vehicle (PSV) operator's licence granted in accordance with the following provisions of this part of this Act.
24. Section 1(1) of the 1981 Act provides that a "public service vehicle" means a motor vehicle (other than a tram car) which:
  - (a) being a vehicle adapted to carry more than eight passengers, is used for carrying passengers for hire or reward; or
  - (b) being a vehicle not so adapted, is used for carrying passengers for hire or reward at separate fares in the course of a business of carrying passengers.

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<sup>10</sup> With effect 21 May 2022

<sup>11</sup> Or permissible laden mass, which is the equivalent term in EU Legislation

<sup>12</sup> <https://www.gov.uk/apply-temporary-transport-manager>

<sup>13</sup> See Statutory Guidance and Statutory Directions on Operating Centres

<sup>14</sup> See Statutory Guidance and Statutory Directions on Financial Standing

- 25.** The position for PSV operators is slightly different from goods operators in that the legislation does not require them to specify vehicles, although some PSV operators are subject to conditions on their licences, which require them to maintain and update a list of vehicles being used under a licence. In any event it is important that the core requirements for financial standing set out in sections 14ZB(b) for restricted licences and 14ZA(2)(c) for standard licence holder are met. As with goods operators, the number of vehicles (authority) applied for should include the number of vehicles required for use as well as any extra to cover an increase in business or emergencies such as breakdowns. Section 14ZC(1)(a) requires adequate facilities or arrangements for maintenance and section 14ZC(1)(b) arrangements for securing compliance. The number of other vehicles may be relevant to consideration of the operating centre.
- 26.** Section 47 of the Local Transport Act 2008 introduced Section 12A and Schedule 2A into the 1981 Act so that any passenger carrying vehicle, adapted to carry more than eight passengers, operating on a public road for the carriage of passengers (either for hire or reward or in connection with any trade or business) without the authority of a PSV Operator Licence, can be detained.
- 27.** Regulation (EC) No 1071/2009<sup>15</sup> does not apply to businesses engaged in road passenger transport services exclusively for non-commercial purposes or which have a main occupation other than that of road passenger transport operator. Non-commercial use means the carriage by road, other than for hire or reward or for own account, for which no direct or indirect remuneration is received, and which does not directly or indirectly generate any income for the driver of the vehicle or others and where there is no link with professional activity.
- 28.** A restricted PSV operator's licence authorises the use of:
- a) public service vehicles not adapted to carry more than 8 passengers; and
  - b) public service vehicles not adapted to carry more than 16 passengers when used:
    - otherwise than in the course of a business carrying passengers; or
    - by a person whose main occupation is not the operation of public service vehicles adapted to carry more than 8 passengers.

## Licensing of Operators

- 29.** A traffic commissioner is responsible for issuing licences in each traffic area, on the basis of undertakings given by the applicant. The system aims to ensure road safety and fair competition through the safe and proper use of goods and public service vehicles and the protection of the environment around operating centres. An operator's licence is required to:
- i) carry goods (or burden) connected with any trade or business, if using a motor vehicle on a road with:
    - a gross plated weight of more than 3.5 tonnes; or
    - if it has no gross plated weight, but an un-laden weight of more than 1525kg;

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<sup>15</sup> Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC

- a vehicle and trailer combination exceeding 3500kgs maximum authorised mass, for hire or reward.<sup>16</sup>

or,

ii) carry goods (or burden) connected with any trade or business, if using a motor vehicle on an international journey with:

- a gross plated weight of more than 2.5 tonnes and up to 3.5 tonnes; or
- a vehicle and trailer combination exceeding 2500kgs and up to 3500kgs maximum authorised mass, for hire or reward.<sup>17</sup>

or,

iii) to use a vehicle for hire or reward:

- which is adapted to carry more than eight passengers; or
- if not so adapted is used in the course of a business for carrying passengers who are charged separate fares.

- 30.** An operators' licence is necessary even if the vehicle is only used for a short period of time.
- 31.** An operator's licence is granted on trust that the operator will comply with the licence requirements. So, operators are expected operators to meet the conditions on the licence and the undertakings given to obtain or renew the licence. If they fail to do so at any point in the life of the licence, a traffic commissioner can take regulatory action against an operator's licence, including revocation, suspension or curtailment where an operator fails to live up to the expected standards.
- 32.** When a vehicle or trailer is first brought into use it should have undergone a recent first use inspection. New vehicles entering service should have undergone a recent and recorded pre-delivery inspection that is as comprehensive as a Preventative Maintenance Inspection. Used vehicles, will require a full Preventative Maintenance Inspection. If a vehicle has been off the road for a period longer than the planned Preventative Maintenance Inspection, it should be the subject of a full Preventative Maintenance Inspection before being brought back into use. It is the responsibility of the operator to ensure that any hired, leased or borrowed vehicle (including trailers) is in a roadworthy condition and has the necessary declaration and certifications when operated on the road. If the operator has any doubt that a rental company has carried out the required level of inspection of the vehicle or trailer, then a first use inspection should be carried out before commencing operations.
- 33.** All Operator Licences are subject to conditions to notify the traffic commissioner of relevant changes which might impact on the core requirements.

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<sup>16</sup> Exemptions under Schedule 3(2) of The Goods Vehicles (Licensing of Operators) Regulations 1995 for 'dual purpose' vehicles such as cars, estates, some pickups, and domestic 4x4 and others below 2040kg un-laden. EU Directives 2009/40/EU and 2014/45/EU have removed some roadworthiness testing exemptions, see the Goods Vehicles (Plating and Testing) Regulations 1988

<sup>17</sup> Exemptions under Schedule 3(2) of The Goods Vehicles (Licensing of Operators) Regulations 1995 for 'dual purpose' vehicles such as cars, estates, some pickups, and domestic 4x4 and others below 2040kg un-laden. EU Directives 2009/40/EU and 2014/45/EU have removed some roadworthiness testing exemptions, see the Goods Vehicles (Plating and Testing) Regulations 1988

## **Role of the traffic commissioners**

34. The traffic commissioners are regulators of the road transport industry in Great Britain. They act as licensing authority and regulatory tribunal under the Operator Licensing regime.
35. Traffic commissioners are appointed by the Secretary of State under section 4 of the Public Passenger Vehicles Act 1981. The Secretary of State may appoint any number of commissioners for England and Wales as the Secretary of State considers appropriate; and to appoint a single commissioner for the Scottish traffic area. The appointment processes for Wales and Scotland may be the subject of additional protocols with the respective devolved Governments. One of the traffic commissioners is appointed by the Secretary of State to act as the Senior Traffic Commissioner under section 4A of the 1981 Act.
36. Schedule 2 of the 1981 Act provides for deputy traffic commissioners who are deployed as deputy traffic commissioners for Great Britain, whilst a deputy traffic commissioner for the Scottish Traffic Area is able to undertake reserved matters within the meaning of the Scotland Act 1998.
37. Great Britain is divided into eight traffic areas. The Senior Traffic Commissioner has powers under section 4B of the 1981 Act to deploy any traffic commissioner or deputy traffic commissioner in England and Wales; and the Scottish traffic commissioner, in respect of any reserved matters, throughout the jurisdiction.<sup>18</sup> The Senior Traffic Commissioner may require any traffic commissioner to carry out such of the reserved functions of traffic commissioner as the Senior Traffic Commissioner may determine and at any place in the jurisdiction. The Senior Traffic Commissioner may similarly determine the extent to which a deputy traffic commissioner will carry out those functions and where. Section 4(4) provides that any traffic commissioner must act under the Statutory Directions of and have regard to any Statutory Guidance given by the Senior Traffic Commissioner.
38. A traffic commissioner for England and Wales may exercise the functions of a traffic commissioner in any traffic area in England and Wales; and may exercise any reserved matters in the Scottish Traffic Area. The Scottish traffic commissioner may exercise the same functions of a traffic commissioner in relation to the Scottish Traffic Area, and England and Wales, in addition to which the Scottish traffic commissioner may exercise devolved functions allocated under devolved legislation.

## **Relevant Powers of the Senior Traffic Commissioner**

39. Section 4(4) of the Public Passenger Vehicles Act 1981 and section 1(2) of the Goods Vehicles (Licensing of Operators) Act 1995 require that traffic commissioners act under general directions of the Senior Traffic Commissioner and, in contrast, that they shall have regard to any guidance issued by the holder of that office.<sup>19</sup>
40. Therefore, the Senior Traffic Commissioner has two relevant powers:

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<sup>18</sup> See Annex 3 Deployment Protocol

<sup>19</sup> As noted by the Court of Appeal in [Coach Hire Surrey Ltd & Paul Jones v Traffic Commissioner for the London and South East Traffic Area & SoS for Transport \[2020\] EWCA Civ 1706](#)

- section 4C(1)(a), the power to issue guidance; and
  - section 4C(1)(b), the power to issue general directions.
41. Whilst both provisions are directed at traffic commissioners, they are separate powers and the statutory documents are therefore separated in to Statutory Guidance and Statutory Directions. Subsection (2) of the 1981 Act provides an indication of what might be the subject of guidance, and subsection (3) in respect of general directions. Whilst these lists are not exhaustive there is a clear implication that Parliament intended that those matters covered by subsection (2) i.e. guidance, should not be the subject of directions and vice versa. It is therefore through Statutory Guidance that the Senior Traffic Commissioner can indicate the meaning and operation of any enactment or instrument.
  42. The Documents containing the Senior Traffic Commissioner's Statutory Guidance and Statutory Directions ("Statutory Documents") were first issued in December 2011 to coincide with the implementation of EU Regulation 1071/2009.
  43. The construction of the Statutory Documents reflects the different powers of the Senior Traffic Commissioner and how they impact those that fall within the traffic commissioners' jurisdictions. The application of the Regulators' Code is limited in terms of the traffic commissioners' duties and not relevant to judicial decision making.
  44. The traffic commissioners must also have regard to the Growth Duty when carrying out their functions as set out in the Deregulation Act 2015 and balance growth alongside other duties and objectives. However, civil proceedings, which begin at the point where a traffic commissioner decides to call an operator to a hearing, are excluded from this duty. There may be other instances where other duties or objectives may take precedence to growth, traffic commissioners as independent and experienced safety regulators are recognised as best placed to decide how to balance the different duties. However, the Senior Traffic Commissioner will have regard to these duties when developing policies and procedures and is satisfied, on the basis of existing case law, that the Statutory Documents are compliant.
  45. The Statutory Documents describe the application of legal discretions and indicate a proportionate approach to the imposition of regulatory burdens and in doing so provide guidance and advice to those operators and drivers who are regulated by traffic commissioners. In developing the guidance, account is taken of the general duty to promote growth. This fits well with the stated intention to ensure fair competition through a consistent approach to the regulatory requirements.
  46. The Statutory Documents therefore provide greater transparency to the way in which traffic commissioners approach their judicial duties and the licensing and other work conducted outside the tribunal room. They also set the framework for instructions to members of staff acting in support of the traffic commissioners.
  47. The Statutory Documents are clearly defined. They are published as an available resource for all applicants, operators, transport managers, vocational drivers, and other interested parties. The other Statutory Documents are as follows:

1. Good Repute and Fitness
2. Finance
3. Transport Managers
4. Operating Centres, Stable Establishments and Addresses for Service
5. Legal Entities (including Insolvency and Regulation 31 & Section 57 Applications)
6. Vocational Driver Conduct
7. Impounding
8. Delegation of Authority (in terms of Staff and Multiple Licence Holders)
9. Case Management
10. Principles of Decision Making & the Concept of Proportionality
11. Format of Decisions (including Publication, Written Reasons and Decisions)
12. Appeals
13. PSV Operations
14. Local Bus Services in England (outside London) and Wales

### *Use of Case Law*

- 48.** The Statutory Documents are intended to provide a consistent basis for decision making and have been developed with regard to the Regulators' Code.<sup>20</sup> This was recognised by the Upper Tribunal and that they provide a useful starting point.<sup>21</sup> As the Upper Tribunal has made clear, in considering regulatory action a traffic commissioner needs to reflect on what is required as a deterrent, not only to the individual party but to others within the industry.<sup>22</sup> However the Code has limited application to individual tribunal decisions.<sup>23</sup>
- 49.** The Upper Tribunal (and its predecessor) has stated on many occasions that each case must be considered on its own merits. Consistency of approach should not be mistaken for uniformity of decisions.<sup>24</sup> Inevitably the legal concept of proportionality (which requires traffic commissioners to weigh the facts as they find them from the evidence before them and to determine what is the appropriate direction to make based on the objects of the legislation) means that each case will involve a collection of different and variable factors. This is not always well understood, even within the regulated industries, and its effect is that the Statutory Guidance and Statutory Directions often provide starting points for anticipated action by traffic commissioners.
- 50.** Any interpretation of the law can only be current as at the date of publication. Annex 1 summarises the position following the United Kingdom's withdrawal from the European Union. In the absence of definitions within the legislation the Statutory Guidance relies on case law to assist traffic commissioners. The nature of appeals from the decisions of traffic commissioners means that points of law are not always fully argued before the Upper Tribunal. Where the appeal is fully argued, for instance where the Secretary of State or another party has been permitted to be represented, that case provides a potentially binding precedent. In other cases, the Senior Traffic Commissioner has sought to identify and apply principles or an approach to an issue which might also assist traffic

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<sup>20</sup> [2022/1227 Lineage UK Transport Ltd, 2018/20 & 2018/28 Midland Container Logistics Ltd and James Donlon D K Barnsley & Sons Ltd](#)

<sup>21</sup> e.g. [2014/013 MM Telford Ltd & RMT Transport Ltd](#)

<sup>22</sup> [2013/047 Dundee Plant Co. Ltd](#) and [2014/024 LA & Z Leonida trading as ETS](#)

<sup>23</sup> Section 32 of the Legislative and Regulatory Reform Act 2006, under which Act the Regulators' Code is issued, makes clear that the Code does not apply to civil proceedings, which includes a Public Inquiry

<sup>24</sup> [2003/327 The Fox \(A1\) Ltd](#)

commissioners in their deliberations. Inevitably the footnotes cannot provide an exhaustive list of the relevant provisions and case law, for which it may be best to refer to the digest of the Administrative Appeals Chamber of the Upper Tribunal.<sup>25</sup> Where it may be necessary to refer to another Statutory Document this is also indicated.

51. In referring to the decisions of the Upper Tribunal the citations relied upon throughout the Statutory Guidance and Statutory Directions are those which accord with the search facility provided on the HM Courts and Tribunal Service web site<sup>26</sup>, so as to ensure accessibility.
52. There are long-established common law duties on tribunals to ensure the sufficiency of reasons.<sup>27</sup> The Supreme Court has held that the duty to give reasons may go beyond the tribunal.<sup>28</sup> The Statutory Guidance in particular should assist traffic commissioners in identifying useful case law. The Statutory Directions should give confidence to staff members to make prompt decisions, particularly when acting under delegations. The Upper Tribunal has held that a traffic commissioner will not be wrong in law if they follow lawful directions given by the Senior Traffic Commissioner.<sup>29</sup>

## Operator Licensing Case Law

53. In considering whether an operator's licence is required, the first question is whether the operator is carrying goods or carrying passengers.<sup>30</sup> For instance, a tractor unit is a goods vehicle. A tractor unit conveying empty trailers to and from the testing station amounts to the carriage of goods because 'goods' includes burden of any description. The hauling of trailers by a tractor unit for the purposes of testing and repair as part of a trade or business requires an operators' licence. A tractor unit is a separate vehicle from a trailer and can only fall within an exemption if it is proceeding to the testing station for the purpose of a test upon itself.<sup>31</sup> The Upper Tribunal has indicated that a strict approach should be taken when applying exemptions from the requirement for an operator's licence.
54. Under section 1(5) of the 1981 Act a vehicle is to be treated as carrying passengers for hire or reward if payment is made for, or includes, the carrying of passengers, irrespective of the person to whom the payment is made including on behalf of a member of any association. A payment made for the carrying of a passenger (excluding those connected with an air replacement service) is to be treated as a fare notwithstanding that it is made in consideration of other matters in addition to the journey and shall be treated as made for the carrying of a passenger if it gives a person the right to be carried, for one or more journeys, whether or not the right is exercised.<sup>32</sup>

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<sup>25</sup> <http://administrativeappeals.decisions.tribunals.gov.uk/Decisions/trafficCommissioners.htm>

<sup>26</sup> Post January 2016 decisions:

[www.gov.uk/administrative-appeals-tribunal-decisions?tribunal\\_decision\\_categories%5B%5D=transport-traffic-commissioner-and-doe-ni-appeals](http://www.gov.uk/administrative-appeals-tribunal-decisions?tribunal_decision_categories%5B%5D=transport-traffic-commissioner-and-doe-ni-appeals)

Pre January 2016 decisions: <http://transportappeals.decisions.tribunals.gov.uk//Aspx/Default.aspx>

<sup>27</sup> See Statutory Guidance and Statutory Directions on the Format of Decisions

<sup>28</sup> [Ghandi Nawaf Mallak v Minister for Justice, Equality and Law Reform \[2012\] IESC 59](#)

<sup>29</sup> [2023/511 Morgan J Ltd](#)

<sup>30</sup> See Statutory Guidance and Statutory Directions on PSV Operations

<sup>31</sup> [2002/134 WC Commercials Ltd](#), [Booth v DPP \[1993\] R.T.R. 379](#)

<sup>32</sup> [2013/056 Bradley Fold Travel Ltd & Peter Wright](#) the Upper Tribunal said "there is no doubt that s.1(5) gives the term "hire or reward" a wide meaning and when considered alongside the test adopted by the Divisional Court

- 55.** The tests for the operation of goods vehicles is different. Section 3(3) of the 1995 Act allows a goods vehicle to be used on a road for the carriage of goods for or in connection with any trade or business carried on by the holder of the licence, other than that of carrying goods for hire or reward. Traffic commissioners should avoid strained constructions and must give effect to Regulation (EC) No 1071/2009 and section 3(2), which permit the carriage of goods for hire or reward as well as in connection with the business of the operator. The starting point is to consider the need for a standard licence. A restricted licence is only appropriate for the carriage of the operator's own goods (i.e. the goods are the property of the business or, in the case of a company that entity or its parent or subsidiary) and on their own account, i.e. no more than ancillary to the overall activities of the undertaking. So, where an operator only carries goods that are, or become and then remain, the operator's own property, a restricted licence is likely to be appropriate.
- 56.** The Upper Tribunal has stressed the importance of looking at the purpose of the operation. For instance, the recovery of vehicles does not include the return of that vehicle, where it has been repaired.<sup>33</sup> Where a predominant part and purpose of the operation is the transportation of goods, that is likely to fall within the definition given to hire or reward adopted by the Upper Tribunal. Where the transport is part of the operator's wider business, such as converting or processing of the goods as opposed to simply conveying them to another place, that is likely to fall within the definition of section 3(3). The following illustrate how the operation of the individual operator is relevant:
- a) Builders Merchants – these operations will normally require only a restricted licence, provided that the predominant part of business is selling its goods and ownership of the property transfers upon delivery. However, if the business is mainly a warehouse operation and transport of goods is or becomes a major part of that business it may fall into the standard category.
  - b) Sewage removal – if processing is involved it tends to indicate restricted operations, but this may depend on the degree of change in the nature of the waste. If the operation predominantly involves the removal of waste (for instance water) to third-party premises or treatment unit, it is likely to require a standard licence. If transported to the operator's own premises as part of its treatment services, this indicates that a restricted licence may be sufficient. If the types of operation alter between journeys, a standard licence would be required.
  - c) Skip operations – in order to comply with environmental protection legislation, ownership of the contents usually transfers upon collection of the skip, but the degree of processing is also relevant. The production of a waste processing certificate will usually indicate that some form of processing takes place. That involves access to premises and facilities for those purposes. If transported to

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in *Albert v Motor Insurers' Bureau* (supra)... the term clearly includes the manner in which Mr Wright was operating the vehicles despite the fact that he was doing his best to make a small annual loss" [2017/076 Andrew Steven Gingell v DVSA](#) reiterated the test from *Albert v Motor Insurers' Bureau* [1971] 3 W.L.R 291 "that the test of whether a vehicle was being used for "hire or reward" was whether there had been a systematic carrying of passengers for reward which went beyond the bounds of mere social kindness"

<sup>33</sup> 2020/020 *Parker Body Repairs Ltd* by reference to sections 2 and 3 of the 1995 Act and Part V of Schedule 1, Vehicle Excise and Registration Act 1994

the operator's own premises for processing, this indicates that a restricted licence may be sufficient.<sup>34</sup>

- d) Scaffolding – operators carrying their own material, where the transport is ancillary to the purpose of their scaffolding business, will require a restricted licence.
- e) Recovery operations – this has been considered by the Upper Tribunal, recovery may be authorised under a restricted licence but that does not include the return of that vehicle, after it has been repaired, which would require a standard licence.

**57.** As the examples demonstrate, determining the correct type of licence might be a question of fact and degree, ownership of the goods can be relevant to determining the type of licence required, but the Upper Tribunal indicates that traffic commissioners should also look at the business model and what was involved in the transport activity. Answering in the affirmative to the following is likely to suggest that the operation was for “hire or reward”, for which a standard licence would be required:

- Is the transport of the goods a predominant part of the business or service provided?
- Does the operator hold, and rely on when carrying those goods, a type of insurance policy that covers carriage of goods for reward?
- Does the carrying result in payment, direct or indirect, which benefits the owner or user of the vehicle?

**58.** One of the exemptions allowed under section 2(2A) is the use of a vehicle for international carriage by a haulier established in EU Member States. Article 8(2) of Regulation (EC) No 1072/2009 defines the extent to which non-resident carriers from EU Member States are permitted to operate national road haulage services (i.e. cabotage). The provisions enable any haulier who is a holder of a UK Licence for the Community and whose driver (if he is a national of a third country) holds a driver attestation, to carry out two cabotage operations for hire or reward. The cabotage operations must be completed within the seven days following the last unloading of an incoming international journey and using the same tractor unit. Where a foreign based haulier applies for an operator's licence in Great Britain that haulier will become a ‘resident carrier’<sup>35</sup> and subject to the ongoing obligations to comply with domestic law including Vehicle Excise Duty<sup>36</sup> (as per section 1 of the Vehicle Excise and Registration Act 1994). In order to obtain Vehicle Excise Duty, the applicant will usually be required to present a valid MOT test certificate.<sup>37</sup> Those operations will only conform to the 2009

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<sup>34</sup> The type of waste carrier registration may also denote the type of licence required. For example, in England and Wales lower tier registration generally only allows the transportation of waste that belongs to the operator whereas upper tier registration allows for the transportation of other people's waste

<sup>35</sup> [2000/063 Reids Transport Co Ltd](#)

<sup>36</sup> Subject to exemptions provided for by The Motor Vehicles (International Circulation) Order 1975 (as amended by The Motor Vehicles (International Circulation) (Amendment) Order 2022), particularly those around dual registration for specialist events hauliers - <https://www.gov.uk/guidance/dual-registration-for-specialist-eventshauliers>

<sup>37</sup> Regulation 3 of the Goods Vehicles (Evidence of Test Certificates) Regulations 2004 and section 53(2) of the Road Traffic Act 1988. The Vehicle Excise and Registration Act applies to both Great Britain and Northern Ireland. In order to obtain Vehicle Excise Duties a valid test certificate must be in force. In Great Britain roadworthiness requirements are provided for in The Road Traffic Act 1988 and the Motor Vehicles (Tests)

regulation if the haulier can produce clear evidence of the incoming international carriage and each of the consecutive cabotage operations. That evidence must be kept in the vehicle and made available for inspection at any roadside check.<sup>38</sup>

59. Section 58 of the 1995 Act and section 81 of the 1981 Act, deem the user of a vehicle to be the driver, if s/he owns it (under hire purchase or loan etc.), or, in any other case, the person who employs/contracts the driver. The Transport Tribunal considered the question of who is operating in [2004/377 E A Scaffolding and Systems Ltd and 2004/426 E A Contract Services Ltd](#) and confirmed that it is generally the employer of the driver who will be the operator for the purposes of the legislation. The key in determining whether or not a person is an employee, is often to be found in the terms of employment; or if a service provider, in the contract for supply of services. Terms or a contract of employment have not been comprehensively defined in legislation or case law. The courts have adopted various tests in order to determine whether or not a relationship amounts to a relationship of employment but the general approach is to consider all the factors relevant to the issue of employment and to weigh up those factors that point towards the existence of a contract of employment and those that point away from such a contract.<sup>39</sup>
60. In the E A Scaffolding case<sup>40</sup> the Tribunal also approved of the traffic commissioner's reliance on a Court of Appeal decision in [Interlink Express Parcels Limited v. Night Trunkers Limited & Another \[2001\] EWCA Civ 360](#). In exceptional circumstances it may be necessary to look at wider factors. This case turned on the identity of the operator under sections 2 and 58(2) of the Goods Act. In considering the temporary transfer of employment Arden LJ carried out a detailed review of the law. The Tribunal remarked that this was a factually complex case which could not easily be summarised. It deprecated "*salami slicing*" those parts of the day where one activity was carried out from those parts of the day where another, such as driving, might be undertaken. The Tribunal relied on the principle that "*Interlink had the right to control the way in which the Night Trunker drivers operated their vehicles, and in all the circumstances that such drivers were properly to be regarded as temporary deemed servants of Interlink and accordingly as its servants for the purposes of section 58(2) of the 1995 Act*".
61. In determining who is operating, the issue is therefore likely to be one of control: for instance is someone entitled to give the orders as to how the work should be done?<sup>41</sup> The greater the amount of control exercised over the details of the work to be done, the more likely the relationship is to be one of employment.<sup>42</sup> An operator must therefore be able to clearly demonstrate how the business is run,

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Regulations 1981. In Northern Ireland the equivalent provisions are to be found in the Road Traffic (Northern Ireland) Order 1995. Vehicles subject to a Northern Ireland annual test are thereby exempt from the GB requirements

<sup>38</sup> [2011/060 Nolan Transport v VOSA and SoS for Transport, 2016/008 Van Der Gaag Transport De Lier BV v DVSA](#)

<sup>39</sup> [Carmichael and Another v National Power Plc \[1999\] UKHL 47](#) approved 3 questions posed by the judge in [Readymix Concrete \(South East\) Ltd v Minister of Pensions and National Insurance \[1968\] 2 QB 497](#): the obligation to provide a personal service; the obligation to be controlled in relation to the manner of the task to such an extent that the worker becomes a servant; and that there is mutuality of obligations. HMRC has advised that to all intents and purposes, lorry drivers cannot be self-employed when they are driving a lorry, unless they are owner/drivers with a licence to operate

<sup>40</sup> [2004/377 E A Scaffolding and Systems Ltd and 2004/426 E A Contract Services Ltd](#)

<sup>41</sup> [Mersey Docks and Harbour Board v Coggins and Griffith \(Liverpool\) Ltd and McFarlane \[1946\] UKHL 1, 2019/054 Bridgestep Ltd and Tom Bridge](#)

<sup>42</sup> [Simmons v Heath Laundry Co \[1910\] 1 KB 543](#)

drivers are engaged and finances allocated. On request, an operator is expected to provide relevant documentation, so that a traffic commissioner can determine whether there is supervision, control and compliance of vehicles and drivers .<sup>43</sup>

### *Exemptions under Schedule 3 of the Goods Vehicles (Licensing of Operators) Regulations 1995*

**62.** Once it has been established that an operation falls within the requirements of operator licensing, Regulation 33 of the Goods Vehicles (Licensing of Operators) Regulations 1995 can then be considered as it provides for the classes of vehicles for which a licence is not required, by reference to Part I of Schedule 3. A body of case law has developed around some of these exemptions and whilst many of the cases are fact specific, some basic legal principles have been extracted. It is not possible to provide guidance in every set of circumstances. Where there is doubt as to the applicability of an exemption, a traffic commissioner can reasonably expect that informed legal advice has been sought.

**63.** When considering exemptions, the courts often look to the judgment of Sullivan J in *Cleansing Service Group Ltd*<sup>44</sup> in which it was observed:

*"Some system of regulating haulage operators is clearly required in order to protect public safety. It is therefore understandable that Parliament has prescribed the limits placed upon the exceptions with some care. In my view it is not a question of giving the exceptions a broad or narrow interpretation. There is no reason other than to give them their ordinary and natural meaning."*

**64.** The Divisional Court considered the exemptions contained in Part II of Schedule 3 as they relate to paragraph 1 of Part I, namely *hauling articles for a farm required by the keeper, being either the occupier of the farm or a contractor employed to do agricultural work on the farm by the occupier of the farm*. Ultimately, the appeal failed as the keeper was not employed by the occupier of the farm. The issues centred around that definition of "keeper", by reference to Regulation 3, for which the Court posed four questions.

**65.** Paragraph 15 exempts: *A vehicle fitted with a machine, appliance, apparatus or other contrivance which is a permanent or essentially permanent fixture, provided that the only goods carried on the vehicle are-*

*a) water, fuel, accumulators and other equipment used for the purpose of propulsion or the running of the vehicle, loose tools and loose equipment;*

*b) to be mixed by the machine, appliance, apparatus or contrivance with other goods not carried on the vehicle on a road in order to thrash, grade, clean or chemically treat grain;*

*c) to be mixed by the machine, appliance, apparatus or contrivance with other goods not carried on the vehicle in order to make fodder for animals; or*

*d) mud or other matter swept up from the surface of a road by the use of the machine, appliance, apparatus or other contrivance.*

**66.** This exemption was amended by Goods and Motor Vehicles (Miscellaneous Amendments) Regulations 2018. The prior wording formed the basis of [2009/023](#)

<sup>43</sup> [2023/1324 Abbey Coaches \(Darwen\) Ltd](#), see Statutory Document on Legal Entities

<sup>44</sup> [Cleansing Service Group Ltd v Vehicle & Operator Services Agency \[2006\] EWHC 662 \(Admin\)](#)

[Howard Collins](#) in which the Tribunal held: *“The important words are these: ‘the only other goods or burden carried are required for use in connection with the fitted equipment’. The underlining of ‘only’ and ‘required’ is ours because those words stress the two points, which need to be made in relation to this passage. First, the ‘other goods or burden’, (ie everything in addition to the equipment fitted) must be carried because it is ‘required’, in connection with the fitted equipment. Typically that would mean that the other goods or burden were carried because they were needed to make the equipment fitted work. Second, the expression ‘the only other goods or burden’ means that if the vehicle carries a mixed load, only part of which is required for use in connection with the fitted equipment, then it is not exempt”.*<sup>45</sup>

67. The Upper Tribunal has also considered the meaning of “contents” in an impounding case for the purposes of return under the Goods Vehicles (Enforcement Powers) Regulations 2001 and in doing so drew a distinction between “contents” and “goods” or “load”. In [2007/075 MJ Cooney](#) the appellant had fitted a crane to a vehicle after purchase and then used the adapted truck for the business of carrying scrapped cars. Although the crane was attached to the vehicle by eight bolts and was detachable, the appeal for the return of a crane as “contents” was dismissed on the finding it was plain that the crane was not part of the “contents”.
68. Paragraph 22 exempts: *A showman's goods vehicle and any trailer drawn thereby.* Regulation 3(2) defines a “showman’s goods vehicle” as having the same meaning as in section 62 of the Vehicle Excise and Registration Act 1994 and states a “showman’s goods vehicle” means a showman’s vehicle which:
- (a) is a goods vehicle, and;
  - (b) is permanently fitted with a living van or some other special type of body or superstructure forming part of the equipment of the show of the person in whose name the vehicle is registered under this Act’.
69. A “showman’s vehicle” is defined as a vehicle:
- (a) registered under this Act in the name of a person following the business of a travelling showman, and
  - (b) used solely by him for the purposes of his business and for no other purpose.
70. This exemption was considered in the case of *Rowe*<sup>46</sup>, adopting the approach in *Kayes*<sup>47</sup>, which considered whether the manner in which kiosks were transported fell within the definition. It was held in *Kayes* that “in order to satisfy the alternative requirement under section 62 ‘*some other special type of body or superstructure forming part of the equipment of the show*’ it is not necessary for such to be identifiable from the outside of the vehicle. In other words, obvious external alteration or construction is not a prerequisite, it is a question of fact and degree in each case whether the alterations and/or additions mean that the vehicle has been permanently fitted with a special type of body or superstructure.” As with other exemptions the use of the vehicle must fall exclusively within that definition

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<sup>45</sup> North West Traffic Area Licensing Authority v Post Office [1981] 11 WLUK 171 – the Divisional Court decided that a vehicle which had a permanent fixture, namely a crane and power-drive auger, but which also carried poles for erection was not exempt as the poles were not required for use in connection with the crane or auger

<sup>46</sup> [Driver and Vehicle Standards Agency v Rowe \[2017\] EWHC 608 \(Admin\)](#)

<sup>47</sup> [Vehicle and Operator Services Agency v Kayes \[2012\] EWHC 1498 \(Admin\)](#)

to apply, in the case of Showmen membership of the Showmen's Guild would not be sufficient evidence that the exemption applies.

71. Paragraph 27 exempts: *A recovery vehicle*. The legal status of “recovery vehicle” has been considered by the Upper Tribunal in [2008/011 Ansvar Holdings](#) and [2003/286 Kenneth William Richards](#) by reference to the definition provided in the Vehicle Excise and Registration Act 1994. “*A recovery vehicle means a vehicle that is constructed or permanently adapted primarily ... for the purpose of lifting, towing and transporting disabled vehicles*” and goes on to say that “*a vehicle is not a recovery vehicle at any time that it is used for purposes other than*” [a range of jobs not relevant here]; moreover at Part 5 of Schedule 1 the regulations state “*a vehicle is not a recovery vehicle if at any time the number of vehicles which it is used to recover exceeds a number specified for the purpose of this sub-paragraph, by an order made by the Secretary of State and goes on to provided that “the number specified for the purposes of paragraph 8(4) is two.*”
72. For a recovery vehicle to be exempt it must fall within that definition under the Vehicle Excise and Registration Act 1994 and be used for one of the purposes defined in paragraph 5(3), Part V of Schedule 1 as above. The Administrative Court in the case of *Driver and Vehicle Standards Agency v Classic Restoration and Services Ltd*<sup>48</sup> considered the following provision: (b) the removal of a disabled vehicle from the place where it became disabled to premises at which it is to be repaired or scrapped. Jefford J decided that a common-sense approach should be taken when interpreting what is a “disabled vehicle”, namely “*a vehicle which has been rendered disabled, as part of works on it, has not become disabled. It has been disabled or been made disabled. A vehicle which is in the process of restoration may well be being transported for restoration and not repair. I repeat that it is a question of fact and degree*”.
73. Regulation 45 of The Road Vehicles (Registration and Licensing) Regulations 2002 refers to the purposes detailed in Schedule 7, which includes:
1. *Carrying any person who, immediately before the vehicle became disabled was the driver of, or a passenger in that vehicle, together with his personal effects, from the premises at which the vehicle is to be repaired or scrapped to his original intended destination.*
  2. (1) *At the request of a constable or a local authority empowered by or under statute to remove a vehicle from a road, removing such a vehicle to a place nominated by the constable or local authority.*  
(2) *In sub-paragraph (1) “road” has the meaning given—*
    - (a) *in relation to England, Scotland or Wales by section 192 of the 1988 Act; and*
    - (b) *in relation to Northern Ireland by Article 2 of the Road Traffic (Northern Ireland) Order 1995.*
  3. *Proceeding to a place at which the vehicle will be available for use for a purpose specified in paragraph 5(3)(a) or (b) of Schedule 1 to the 1994 Act and remaining temporarily at such a place so as to be available for such use.*
  4. *Proceeding from—*

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<sup>48</sup> [Driver and Vehicle Standards Agency v Classic Restoration and Services Ltd \[2019\] EWHC 718 \(Admin\)](#)

- (a) a place where the vehicle has remained temporarily so as to be available for such use;*
- (b) a place where the vehicle has recovered a disabled vehicle; or*
- (c) such premises as are mentioned in paragraph 5(3)(b) or (c) of Schedule 1 to the 1994 Act.*

**74.** Paragraph 29 exempts: *A vehicle proceeding to or from a station provided by the Secretary of State under section 45 of the Road Traffic Act 1988 for the purposes of an examination of that vehicle under that section provided that-*

- (a) the only load being carried is a load required for the purposes of the examination; and*
- (b) it is being carried at the request of the Secretary of State.*

**75.** The Upper Tribunal in [2002/134 WC Commercials](#) concluded that a tractor unit is a “goods vehicle” and the hauling of an unladen trailer is “carriage of goods” as discussed above.

## DIRECTIONS

76. The Senior Traffic Commissioner for Great Britain issues the following Directions to traffic commissioners under section 4C(1) of the Public Passenger Vehicles Act 1981 (as amended) and by reference to section 1(2) of the Goods Vehicles (Licensing of Operators) Act 1995. These Directions are addressed to the traffic commissioners in respect of the approach to be taken by staff acting on behalf of individual traffic commissioners and dictate the operation of delegated functions.

### Basis of Directions

77. The following direction is issued under section 4C(1)(b) of the 1981 Act particularly to assist support staff and in the interests of adopting a consistent approach to decision making.

78. The statutory provisions require traffic commissioners to act under general directions of the Senior Traffic Commissioner but to only have regard to Statutory Guidance. As with any statutory power it must be exercised in accordance with public law principles. Accordingly, the power under section 4C(1)(b) must be used for the stated intention of Parliament and cannot be used to circumvent those intentions. The Senior Traffic Commissioner acknowledges that Statutory Guidance and Statutory Directions cannot anticipate any legal changes and may therefore be subject to decisions of the higher courts and to subsequent legislation.

79. Members of staff are obliged to follow the Statutory Directions. Whenever the Statutory Directions, as published, are exceeded then an exception report to the Head of the Office of the Traffic Commissioner must be prepared. Where a traffic commissioner finds legal grounds not to follow the current Statutory Guidance, the Senior Traffic Commissioner directs that the individual traffic commissioner must record detailed reasons for departing from the published Statutory Guidance in writing.

80. The Court of Appeal has considered the question of whether there is a general requirement as to the sufficiency of reasons<sup>49</sup>. *The giving of reasons may among other things concentrate the decision-maker's mind on the right questions; demonstrate to the recipient that this is so; show that the issues have been conscientiously addressed and how the result has been reached or alternatively alert the recipient to a justiciable flaw in the process. On the other side of the argument, it may place an undue burden on decision makers; demand an appearance of unanimity where there is diversity; call for the articulation of sometimes inexpressible value judgments; and offer an invitation to the captious to comb the reasons for previously unsuspected grounds of challenge.*

81. The Upper Tribunal has two guiding principles: a party is entitled as a matter of law to know why an adverse decision has been reached, and the decision-maker is obliged to demonstrate that they have conducted the appropriate balancing exercise and reached a decision based only on relevant matters<sup>50</sup>. The Upper

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<sup>49</sup> [R \(Asha Foundation\) v Millennium Commission \[2003\] EWCA Civ 88](#) and adopted the same approach outlined by Sedley J in [R v The Universities Funding Council Ex parte The Institute of Dental Surgery \[1993\] EWHC Admin 5](#)

<sup>50</sup> See Statutory Guidance and Statutory Directions on the Principles of Decision Making

Tribunal expects an adequate and intelligible statement of reasons, whether delivered in writing or in person (*ex tempore*).

82. It is accepted that the interactive nature of a public inquiry may require a traffic commissioner to engage with an operator in order to test the evidence and to encourage adherence to high standards and the regulatory regime. Different considerations might apply to a decision on the papers but any decision must communicate sufficient reasons to satisfy the law and any appellate body. There is no need to set out every trivial factor or combination that has no influence on the decision. There are generally three main elements to the balancing exercise. First, the relevant factors should be identified; second, each relevant factor should be assessed; and third, the analysis must indicate the weight or significance that has been attached to the relevant factors with reasons<sup>51</sup> so that the basis of the decision-making process is clear. Submissions need to be accurate, and any decision must be adequately explained by staff acting on their behalf.<sup>52</sup>

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<sup>51</sup> [2007/459 KDL European Ltd & Kevin Lumsden](#), [2002/001 Bryan Haulage Ltd \(No1\)](#), [2013/080 Graham William Smith trading as Smiths Coaches](#), [2000/057 Yorkshire Rider Ltd & 062 First Bristol Buses](#), [2008/130 Lorna Eddie trading as Lorn Freight](#), [2004/439 Surrey CC v Ripley](#), [2005/466 Nijar Dairies Ltd](#), [2006/147 Castleton Turf and Topsoil Supplies Ltd](#), [2009/008 William Ball trading as Severn Valley Transport](#)

<sup>52</sup> [2016/018 Eric Leslie Brown](#)

## ANNEX 1 - WITHDRAWAL FROM THE EUROPEAN UNION

The European Union (Withdrawal) Act 2018, as amended by The European Union (Withdrawal Agreement) Act 2020, makes legal provision ratifying the Withdrawal Agreement with the European Union.

Section 1 repeals the European Communities Act 1972 but saves EU-derived provisions (English Language version only) into domestic legislation and allows for the incorporation of direct EU legislation.

Direct EU legislation, so far as operative immediately before exit day, forms part of domestic law on and after exit day. “Direct EU legislation” includes any EU regulation, EU decision or EU tertiary legislation, as it has effect in EU law immediately before exit day and so far as:

- (i) it is not an exempt EU instrument (section 20(1) and Schedule 6),
- (ii) it is not an EU decision addressed only to a member State other than the United Kingdom, and
- (iii) its effect is not reproduced in an enactment to which section 2(1) applies.

Regulations (EC) No 1071/2009<sup>53</sup>, and (EC) No 1072/2009<sup>54</sup> have been retained (as “retained EU legislation”) under Section 2 of the EU (Withdrawal) Act 2018 and, along with the UK legislation, help regulate the operator licensing regime. Those regulations were amended immediately following the UK’s exit from the EU, and subsequently to reflect the provisions of the UK/EU Trade and Co-operation Agreement within the meaning given in section 37 of the European Union (Future Relationship) Act 2020. The Goods Vehicles (Licensing of Operators) (Amendment) Regulations 2022 make further amendments to retained Regulations (EC) No 1071/2009 and (EC) No 1072/2009, as well as to domestic legislation.

The legislation also saves rights, powers, liabilities, obligations, restrictions, remedies and procedures which, immediately before exit day:

- (a) were recognised and available in domestic law by virtue of section 2(1) of the European Communities Act 1972, and
- (b) were enforced, allowed and followed accordingly,

and allows for them to continue on and after exit day, and to then be available in domestic law (and to be enforced, allowed and followed accordingly).

That provision does not apply to any rights, powers, liabilities, obligations, restrictions, remedies or procedures so far as they:

- (a) form part of domestic law by virtue of section 3, or
- (b) arise under an EU directive (including as applied by the EEA agreement) and are not of a kind recognised by the European Court or any court or tribunal in

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<sup>53</sup> Regulation (EC) No 1071/2009 established common rules across the European Union concerning the conditions that need to be complied with to pursue the occupation of a road transport operator, engaged in the transport of goods or passengers

<sup>54</sup> Regulation (EC) No 1072/2009 established common rules on how the international road haulage market operates across the EU. It establishes a system of Community licences which can be issued by each member state to hauliers whose business is established in their country

the United Kingdom in a case decided before exit day (whether or not as an essential part of the decision in the case).

The principle of the supremacy of EU law does not apply to any enactment or rule of law, passed or made on or after exit day.

A court or tribunal is not bound by any principles laid down, or any decisions made, on or after exit day by the European Court, and cannot refer any matter to the European Court on or after exit day. A court or tribunal may have regard to anything done on or after exit day by the European Court, another EU entity or the EU so far as it is relevant to any matter before the court or tribunal.

The Act allows a Minister to make regulations to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the EU. In the event of any argument as to the application of EU-derived provisions made prior to the UK's exit from the EU and in particular during the transition period to 1<sup>st</sup> January 2021, traffic commissioners should refer to the full legislation.

## **ANNEX 2 - CLASSES OF GOODS VEHICLES FOR WHICH A LICENCE IS NOT REQUIRED**

### **Schedule 3 of the Goods Vehicles (Licensing of Operators) Regulations 1995**

#### Part I

1. Any tractor as defined in paragraph 4(3) of Part IV of Schedule 1 to the Vehicle Excise and Registration Act 1994 (as originally enacted) while being used for one or more of the purposes specified in Part II of this Schedule.
2. A dual-purpose vehicle and any trailer drawn by it.
3. A vehicle used on a road only in passing from private premises to other private premises in the immediate neighbourhood belonging (except in the case of a vehicle so used only in connection with excavation or demolition) to the same person, provided that the distance travelled on a road by any such vehicle does not exceed in the aggregate 9.654 kilometres, (6 miles), in any one week.
4. A motor vehicle constructed or adapted primarily for the carriage of passengers and their effects, and any trailer drawn by it, while being so used.
5. A vehicle which is being used for funerals.
6. A vehicle which is being used for police, Scottish Fire and Rescue Service or, in England or Wales, fire and rescue authority or ambulance or National Crime Agency purposes.
7. A vehicle which is being used for fire-fighting or rescue operations at mines.
8. A vehicle on which no permanent body has been constructed, which is being used only for carrying burden which either is carried solely for the purpose of test or trial, or consists of articles and equipment which will form part of the completed vehicle when the body is constructed.
9. A vehicle which is being used under a trade licence.
10. A vehicle in the service of a visiting force or of a headquarters within the meaning of Article 8(9) of the Visiting Forces and International Headquarters (Application of Law) Order 1999.
11. A vehicle used by or under the control of Her Majesty's United Kingdom forces.
12. A trailer not constructed primarily for the carriage of goods but which is being used incidentally for that purpose in connection with the construction, maintenance or repair of roads.
13. A road roller and any trailer drawn by it.
14. A vehicle while being used under the direction of HM Coastguard or of the Royal National Lifeboat Institution for the carriage of life-boats, life-saving appliances or crew.

15. A vehicle fitted with a machine, appliance, apparatus or other contrivance which is a permanent or essentially permanent fixture, provided that the only goods carried on the vehicle are-

- a) water, fuel, accumulators and other equipment used for the purpose of propulsion or the running of the vehicle, loose tools and loose equipment;
- b) to be mixed by the machine, appliance, apparatus or contrivance with other goods not carried on the vehicle on a road in order to thrash, grade, clean or chemically treat grain;
- c) to be mixed by the machine, appliance, apparatus or contrivance with other goods not carried on the vehicle in order to make fodder for animals; or
- d) mud or other matter swept up from the surface of a road by the use of the machine, appliance, apparatus or other contrivance.

16. A vehicle while being used by a local authority for the purposes of the enactments relating to weights and measures or the sale of food and drugs.

17. A vehicle while being used by a local authority in the discharge of any function conferred on or exercisable by that authority under Regulations made under the Civil Defence Act 1948.

18. A steam-propelled vehicle.

19. A tower wagon or trailer drawn thereby, provided that the only goods carried on the trailer are goods required for use in connection with the work on which the tower wagon is ordinarily used as such.

20. A vehicle while being used for the carriage of goods within an aerodrome within the meaning of section 105(1) of the Civil Aviation Act 1982.

21. An electrically propelled vehicle first registered before 1st March 2015.

22. A showman's goods vehicle and any trailer drawn thereby.

23A. (1) A vehicle which is being used in Great Britain to carry out a cabotage operation—

(a) which consists of national carriage for hire or reward by a haulier who is a holder of a Community licence and whose driver, if a national of a country which is not a member State, holds a EU driver attestation;

(b) where the vehicle is being used only for the carriage of vehicles in categories M1 and N1, as defined in Article 4 of Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles; and

(c) the vehicle is being used at any time during a period beginning with—

(i) 22nd February and ending with 31st March; or

(ii) 25th August and ending with 30th September.

(2) In this paragraph “Community licence” and “EU driver attestation” have the same meanings as in Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market.

24. A goods vehicle first used before 1 January 1977 which has an unladen weight not exceeding 1525 kilograms and for which the maximum gross weight, as shown on

a plate affixed to the vehicle by virtue of regulation 66 of the Motor Vehicles (Construction and Use) Regulations 1986 or any provision which that regulation replaced, exceeds 3500 kilograms but does not exceed 3556.21 kilograms (3½ tons).

25. A vehicle while being used by a highway authority for the purposes of section 196 the Road Traffic Act 1988.

26. A vehicle being held ready for use in an emergency by an undertaking for the supply of water, electricity, gas or telephone services.

27. A recovery vehicle.

28. A vehicle which is being used for snow clearing, or for the distribution of grit, salt or other materials on frosted, icebound or snow-covered roads or for going to or from the place where it is to be used for the said purposes or for any other purpose directly connected with those purposes.

29. A vehicle proceeding to or from a station provided by the Secretary of State under section 45 of the Road Traffic Act 1988 for the purposes of an examination of that vehicle under that section provided that-

(a) the only load being carried is a load required for the purposes of the examination; and

(b) it is being carried at the request of the Secretary of State.

30. A vehicle in a category or sub-category listed in column 1 of Table 2 in regulation 37 of the Motor Vehicles (Driving Licences) Regulations 1999, provided that—

(a) no goods are being carried on the vehicle or trailer other than any that may be carried on the vehicle for the purposes of a practical test of driving skills and behaviour, as prescribed in that regulation 37;

(b) any goods that are being carried on the vehicle or trailer are being carried only for the purposes of driver instruction and not otherwise—

(i) for hire or reward, or

(ii) for or in connection with any trade or business; and

(c) the vehicle is—

(i) being used for the instruction of a driver who has not passed a test of competence to drive that class of vehicle under section 89 of the Road Traffic Act 1988;

(ii) proceeding to or from a test of competence to drive that class of vehicle under section 89 of the Road Traffic Act 1988 or being used in such a test; or

(iii) being used in the course of—

(aa) a driving lesson for the purpose of enabling a person to obtain a CPC within the meaning of the Vehicle Drivers (Certificate of Professional Competence) Regulations 2007;

(bb) periodic training as defined in regulation 2(1) of the Vehicle Drivers (Certificate of Professional Competence) Regulations 2007; or

(cc) an initial CPC test as defined in regulation 2(1) of the Vehicle Drivers (Certificate of Professional Competence) Regulations 2007.

31. A vehicle—
- (a) fuelled entirely by alternative fuel,
  - (b) with a maximum laden weight not exceeding 4.25 tonnes,
  - (c) currently used in Great Britain for the carriage of goods, and
  - (d) which has not been so used outside Great Britain.

## PART II

### PURPOSES REFERRED TO IN PARAGRAPH 1 OF PART I OF THIS SCHEDULE

32. Hauling-
- (a) threshing appliances;
  - (b) farming implements;
  - (c) a living van for the accommodation of persons employed to drive the tractor; or
  - (d) supplies of water or fuel required for the tractor.
33. Hauling articles for a farm required by the keeper, being either the occupier of the farm or a contractor employed to do agricultural work on the farm by the occupier of the farm.
34. Hauling articles for a forestry estate required by the keeper where the keeper is the occupier of that estate or employed to do forestry work on the estate by the occupier or a contractor employed to do forestry work on the estate by the occupier.
35. Hauling within 24.135 kilometres, (15 miles), of a farm or a forestry estate occupied by the keeper, agricultural or woodland produce of that farm or estate.
36. Hauling within 24.135 kilometres, (15 miles), of a farm or a forestry estate occupied by the keeper, material to be spread on roads to deal with frost, ice or snow.
37. Hauling a snow plough or a similar contrivance for the purpose of clearing snow; and
38. Hauling-
- (a) soil for landscaping or similar works; or
  - (b) a mowing machine,
- where the keeper is a local authority.

## ANNEX 3 – DEPLOYMENT PROTOCOL

### Senior Traffic Commissioner’s statutory powers:

Section 4B of the Public Passenger Vehicles Act 1981

#### *Power of senior traffic commissioner to deploy other commissioners*

*(1) In this section—*

*(a) subsections (2) to (4) confer powers on the senior traffic commissioner in relation to traffic commissioners and deputy traffic commissioners for England and Wales; and*

*(b) subsections (5) to (7) confer powers on the senior traffic commissioner in relation to the Scottish traffic commissioner and any deputy traffic commissioners for the Scottish traffic area.*

*(2) The senior traffic commissioner may require any traffic commissioner for England and Wales to carry out such of the functions of traffic commissioner for England and Wales as the senior traffic commissioner may determine—*

*(a) in relation to such matters relating to England and Wales, or*

*(b) as respects Scotland, in relation to such reserved matters, as the senior traffic commissioner may determine.*

*(3) The senior traffic commissioner may require any traffic commissioner for England and Wales to carry out such of those functions as the senior traffic commissioner may determine at such places—*

*(a) in England and Wales, or*

*(b) in the case of functions which relate to reserved matters and are exercisable in relation to Scotland, in Scotland, as the senior traffic commissioner may determine.*

*(4) Subsections (2) and (3) above also apply in relation to a deputy traffic commissioner for England and Wales as they apply in relation to a traffic commissioner for England and Wales, construing the references to functions accordingly.*

*(5) The senior traffic commissioner may require the Scottish traffic commissioner to carry out as respects England and Wales such of the functions exercisable by the Scottish traffic commissioner in relation to reserved matters by virtue of section 4(3B)(b) of this Act as the senior traffic commissioner may determine.*

*(6) The senior traffic commissioner may require the Scottish traffic commissioner to carry out such of those functions as the senior traffic commissioner may determine at such places in England and Wales as the senior traffic commissioner may determine.*

*(7) Subsections (5) and (6) above also apply in relation to a deputy traffic commissioner for the Scottish Traffic Area as they apply in relation to the Scottish traffic commissioner, construing the references to functions accordingly.*

*(8) In this section—*

- “deputy traffic commissioner for the Scottish Traffic Area” means any person appointed under paragraph 3 or 4 of Schedule 2 to this Act to act as deputy in the case of the Scottish traffic commissioner;*

- “reserved matters” means reserved matters within the meaning of the Scotland Act 1998.

Terms of appointment might specify an office for administrative purposes, but the Senior Traffic Commissioner is responsible for judicial deployment across Great Britain, to the extent described in the legislation. In theory, any traffic commissioner may be required to carry out such of the reserved functions as the Senior Traffic Commissioner may determine, at any place in the jurisdiction. The Senior Traffic Commissioner may similarly determine the extent to which a deputy traffic commissioner will carry out those functions and where. Deployment can be confirmed orally or retrospectively.

As explained in Statutory Guidance, the powers under section 4B of the 1981 Act allow the Senior Traffic Commissioner to deploy any traffic commissioner or deputy traffic commissioner in England and Wales; and the Scottish traffic commissioner, in respect of any reserved matters, throughout the jurisdiction. Except within the Multiple Licence Holder arrangements described in Statutory Document No. 8, all deployments are subject to the agreement of the Senior Traffic Commissioner, for the reasons set out below.

### **Overarching principles**

The traffic commissioner jurisdiction is not currently subject to the provisions of the Tribunals, Courts and Enforcement Act 2007 or the Crime and Courts Act 2013, but it is helpful to take account of the principles identified by the Government during the passing of that legislation and the commitments announced by the Lord Chancellor, as to how deployment might work. Those include, to:

- meet business needs effectively;
- facilitate increasing judicial diversity through the development of judicial skills;
- be distinguished from appointment and not operate, or be perceived to operate, as a means of informal promotion;
- be compatible with the long-term aim of integrating the courts and tribunals;
- recognise the appointments process;

and be subject to monitoring.

Deployment can make it possible for all tribunal needs to be met, subject to effective and speedy recruitment on behalf of the Secretary of State. The Lord Chief Justice’s flexible deployment protocol recognises that: *the recruitment of new judges into both the courts and tribunals is both necessary and desirable, to bring in fresh thinking, to maintain a reasonable age profile and to enhance judicial diversity. In many jurisdictions a failure to recruit new judges over a period of time will have a deleterious effect on these factors and, as such, is contrary to the proper administration of justice.*

In devising this Protocol, particular regard has been given to:

- the importance of encouraging diversity in the traffic commissioner Bench;
- the resource implications of flexible deployment, but also of traffic commissioners and deputy traffic commissioners travelling long distances to provide national coverage;
- the feasibility of establishing fair but proportionate processes to implement the Protocol; and

- the need to ensure that flexible deployment does not have an adverse impact on the resources of the Office of the Traffic Commissioner.

The Senior Traffic Commissioner has issued Statutory Directions relating to Case Management, which include the need to ensure value for money in the use of time and resources (including considering the need to call witnesses whose evidence may be agreed); and dealing with the case in ways which are proportionate to:

- the size and type of licence/s involved;
- the nature and scale of the breaches;
- the complexity of the issues;
- the likely orders and directions to be made;
- the likely effect upon the operator of the proposed orders and directions; and
- ensuring that a public inquiry is listed expeditiously, with an appropriate time estimate.

The Traffic Commissioner Board has delegated responsibility for considering certain complaints to the Senior Traffic Commissioner, but the deployment power has limited application to issues of performance. It is worth noting that, whilst the Lord Chief Justice has the right to make formal disciplinary findings, no actions can be taken unless the Lord Chancellor and the Lord Chief Justice agree. That is intended to safeguard judicial independence and the rule of law.

### **Deputy traffic commissioners**

The instruments of deployment issued by the Senior Traffic Commissioners allow deputy traffic commissioners to undertake reserved functions anywhere within Great Britain. The Senior Traffic Commissioner has directed that a relevant deputy traffic commissioner can, subject to appraisal, be expected to carry out any function as delegated by the full-time traffic commissioner and may be subject to general direction by the traffic commissioner deployed to that traffic area.

For instance, a deputy traffic commissioner may receive directions relating to the use of time and resources in application of the overriding principle. The full-time traffic commissioner is also the data controller for that traffic area. To meet the above responsibilities, the deputy traffic commissioner must comply with the requirements of the data controller and engage with a framework for information governance and policies, failing which delegated access may be removed and the deputy traffic commissioner will have to be redeployed.

Deputy traffic commissioners are expected to provide a minimum sitting day commitment. The use of deputy traffic commissioners is subject to the demands of the statutory regime. This may include but is not limited to the availability of finance, the demands on full-time traffic commissioners, and the availability and competency of the individual deputy traffic commissioner. As the letter of appointment issued on behalf of the Secretary of State indicates, a deputy traffic commissioner may be engaged for a whole day or part day. This may be to conduct public inquiries and preliminary hearings or to deal with cases by way of electronic and paper submissions (box work). The Senior Traffic Commissioner has issued Statutory Directions under section 4C, which a deputy traffic commissioner is required to follow, indicating the need to manage cases by reference to the 'overriding objective' so as to deal with cases in a way which is proportionate to the issues involved. The Statutory Directions note that invariably

cases can be dealt with expeditiously and efficiently within the usual time frame of half a day.

## Deployment Examples

All deployments are subject to Statutory Guidance and Statutory Directions issued by the Senior Traffic Commissioner. The starting point for this Protocol (as with decisions to deploy judges) is therefore business need i.e. use of the deployment power would facilitate the proper administration of justice in the relevant hearing centre and/or traffic area. Consideration will be given to the extent to which flexible deployment is necessary to meet an existing or anticipated business need.

Deployment may be justified in order to:

(i) meet a specific, short-term business need in a specific tribunal location, or meet an urgent business need where, for instance, it would not be feasible or justifiable to run a recruitment competition e.g. where the need is only for a short period of time;

Individual cases, such as those remitted by the Upper Tribunal for rehearing, or where a traffic commissioner or deputy traffic commissioner finds it necessary to recuse themselves, as per the administrative policy guidance, should be submitted to the Senior Traffic Commissioner with an accurate analysis of the appellate Tribunal's reason, a time estimate and the availability of suitable commissioners.

Deployment might also be appropriate to support the health, safety and/or security of an individual commissioner.

(ii) provide a basis for professional development e.g. to enable commissioners to familiarise themselves with other work;

(iii) meet specific professional needs;

The choice about which traffic commissioner or deputy traffic commissioner to deploy may be based on existing judicial expertise or specialisation, performance, potential and/or appraisal. Consideration will also be given to the need to promote judicial development and to increase resilience of the jurisdiction.

All traffic commissioners and deputies are the subject of appraisal to ensure that they have the necessary competency, in order to fulfil those responsibilities delegated to them. The Traffic Commissioner Appraisal Scheme refers to the professional standards expected in relation to each of the core competencies and the performance measures by which those standards will be measured.

Particular concerns may give rise to advice and guidance, or training, or different workloads or types of work.

If a traffic commissioner or deputy traffic commissioner fails to adhere to the given standards, the Senior Traffic Commissioner may deploy the commissioner or deputy to other areas of responsibility and/or refer the issue to the Secretary of State by reference to paragraph 1 of Schedule 2 of the Public Passenger Vehicles Act 1981.

(iv) secure the cost-effective use of the tribunal estate;

Deployment may be determined by reference to actual and anticipated business need. In determining any deployment, account will be taken of the overall cost to the jurisdiction. All other things being equal, finances may be determinative in deciding which traffic commissioner or deputy traffic commissioner to deploy.

It is not anticipated that individual cases should be moved between traffic areas outside the delegations established in Statutory Document No. 8 and specifically under the Multiple Licence Holder arrangements or where there are joined cases.

(vi) where not covered by the above, the proper administration of justice;

In assessing such business needs, consideration will necessarily need to be given to any or any pending recruitment campaigns.

Traffic commissioners are deployed to specific traffic areas, for a purpose. The deployment of deputy traffic commissioners allows for flexibility. It is possible to deal with submissions and some simple hearings remotely, in-person hearings should not routinely be moved between traffic areas without the Senior Traffic Commissioner's agreement under section 4B.

Where cover is required for extended absences, such as leave, Hearing Centre Managers should adopt the same approach as to deployment for remitted appeal cases and may also investigate the Senior Traffic Commissioner's availability to sit during that period.

### **Effect of deployment**

Deployment of either salaried traffic commissioners or fee-paid deputy traffic commissioners does not constitute a separate appointment, does not affect appointment or existing terms and conditions of service, including pay and pension provision.

It is recognised that flexible working arrangements can support greater diversity. In the past, redeployment has been used to support traffic commissioners in meeting caring responsibilities and to meet Convention rights. Temporary deployment in those circumstances will generally follow administrative policy arrangements for special leave. Any permanent transfer from an administrative base (office) to another, will inevitably require the involvement of the senior sponsor.