



Office of the
Traffic Commissioner

Senior Traffic Commissioner's Statutory Document No. 6 Vocational Driver Conduct

2019 revisions

Formal consultation

May 2019

Contents

Senior Traffic Commissioner's Foreword	3
How to respond	4
Freedom of Information	5
Introduction	6
Scope	6
Driver conduct: 2019 revisions	7
Annex A: Full list of consultation questions	12

Foreword

Publishing documents to explain how we work allows traffic commissioners to deliver consistent and fair regulation of the transport industry and represents our efforts to modernise the licensing regime.

Few regulators are able to demonstrate the same level of transparency in their decision-making.

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

For this consultation we have reviewed and made changes to the Statutory Document that relates to Vocational Driver Conduct.

The overarching aim of the vocational driver conduct regime is to ensure that drivers are fit to drive large commercial vehicles and the Statutory Document (in conjunction with others) assists us in our decision-making.

In reviewing the Statutory Document our aim was to ensure clear guidance to industry and to support improvements in our processes. The guidance shows how traffic commissioners will consider referrals made on behalf of the Secretary of State regarding a driver's conduct. This should assist the industry in understanding the likely impact of offending on a driver's ability to continue driving large commercial vehicles.

Many of the amendments recognise changes in the law and decisions made on appeal. The Statutory Document also contains helpful information for drivers and those who employ them or are responsible for their management.

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

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

Richard Turfitt
Senior Traffic Commissioner for Great Britain

How to respond

The Senior Traffic Commissioner welcomes comments from stakeholders on the areas outlined on page 12.

You can respond to this consultation by email or post to:

Email

tccoconsultations@otc.gov.uk

Post

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

The consultation will run from 29 May 2018 to 24 July 2019. The consultation time of eight weeks takes into account that this is not a new document setting out a change in policy approach but augmenting an existing document. The intention is to better assist and inform stakeholders through clarifying and improving on existing advice.

Please ensure that your response reaches us before the closing date so that we can consider your comments.

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

Freedom of Information

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

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

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

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

Introduction

The Traffic Commissioners for Great Britain are independent specialist regulators exercising licensing and tribunal functions. They are responsible for the regulation of commercial vehicle operators based in Great Britain and for regulating the conduct of professional drivers in the truck, bus and coach industries.

As part of their key strategic objectives, the commissioners aim to promote a safe road transport industry which supports compliance, fair competition and protects the environment.

Dealing with the conduct of professional drivers is a critical part of this work.

Traffic commissioners must apply the law when making decisions on individual cases. In checking that vocational drivers are compliant and safe, traffic commissioners carry out a balancing exercise, to assess the relevant risks.

The Senior Traffic Commissioner's Statutory Documents provide guidance and directions to assist with this work. They describe how commissioners apply the law and take a proportionate approach in exercising their regulatory powers.

The Statutory Document on vocational driver conduct indicates to professional drivers the approach that traffic commissioners will adopt for specific matters of conduct.

As case law changes, the document needs to be reviewed regularly. Meeting the expectations of the Regulators' Code and understanding how the document might impact the industry is of clear importance to that process.

Scope

The consultation seeks to gather formal responses from the industry, stakeholders and other interested parties on the specific changes made to Statutory Document No.6 entitled Vocational Driver Conduct. In summary, the changes concern:

- driver disqualification;
- abusive behaviour and intimidation of officials;
- hearing cases when drivers fail to attend without notice;
- additional language support for drivers during hearings;
- the increased penalties for mobile phone use;
- armed services personnel;
- the entry points, aggravating features and case examples.

Driver conduct

Under the Road Traffic Act 1988, anyone who applies for entitlement to drive a large goods vehicles and/or passenger-carrying vehicle must satisfy the Secretary of State that he/she is a fit person to hold the licence applied for.

If there are concerns relating to the fitness of an applicant, or someone who already holds a vocational licence, the Secretary of State may refer the matter to a traffic commissioner for consideration.

Referrals are usually made by the Driver and Vehicle Licensing Agency (DVLA) but can also be made by other sources, notably the Police or the Driver and Vehicle Standards Agency (DVSA).

When considering the conduct of an applicant or existing licence holder, traffic commissioners can:

- grant the vocational entitlement;
- refuse an application (including indicating a period of time where the applicant is expected to drive ordinary vehicles without incurring further offences);
- suspend an existing entitlement for a period of time;
- revoke an existing entitlement
- disqualify an existing licence holder for a period of time from driving large vehicles.

Unlike the legislation that governs the operator licensing function there is no requirement for the traffic commissioners to publish notice of driver conduct hearings or the decisions taken at those hearings. The traffic commissioners recognise the risk of action being taken against a driver's entitlement of which an employer is unaware. Unless the employee notifies his employer of a suspension or revocation an employer may unwittingly continue to deploy the employee to driving duties. As many suspensions are relatively short an employer's routine driving licence checks may not identify the suspension. The driving of vehicles whilst not authorised obviously has significant risk to a business, particularly the status of the insurance.

The traffic commissioners would like the industry's views on whether it would be beneficial to publish notice of driver conduct hearings and decisions and how that is best achieved whilst still adhering to relevant data protection legislation.

2019 revisions

The current version of Statutory Document No. 6 was published in January 2017 and is a slightly modified version of a document that was published in 2016 following extensive consultation with industry representatives.

The revised document is available as part of this consultation but we have summarised the key changes in the table below.

Paragraph	Title	Amendments	Reasons
37 - 40	Mutual Recognition	Inclusion of details relating to the agreement on driver disqualifications between the United Kingdom and Republic of Ireland.	This agreement came into force in 2017 and ensures that a driver disqualified for certain driving offences is recognised as such in both the UK and Republic of Ireland.
52	Conduct and Fitness	Confirmation that abusive behaviour or intimidation of officials will lead to a traffic commissioner considering fitness to hold vocational entitlement.	<p>Public officials have the right to carry out their duties without the suffering abuse or intimidation. Directions given by public officials whilst carrying out their lawful duties must be followed and drivers who behave in an abusive or intimidating manner can expect a traffic commissioner to consider taking action against their entitlement to drive large commercial vehicles.</p> <p>This makes the guidance consistent with that already published in Statutory Document No. 1 - 'Good Repute and Fitness'.</p>
70	Driver conduct hearings	Increase of age of refusal from 70 th birthday to 80 th birthday to reflect the trend towards working later in life.	<p>When refusing an application, usually when a person fails to attend a hearing or respond to correspondence, a traffic commissioner for the purpose of record keeping may indicate that the driver is refused until a date in the future.</p> <p>Previously this date was set at a driver's 70th birthday in recognition that very few drivers will work beyond that date. However, there is a trend towards people working much later in life and this change reflects that.</p> <p>It should be noted that, unless it is accompanied by</p>

			<p>a disqualification order, such a decision does not prevent a driver re-applying for entitlement at any time and the application will be considered on its merits.</p>
71 - 72	Driver conduct hearings	<p>Clarification that traffic commissioners may hear cases on papers should a driver not attend a hearing without prior notice and that, even when an adjournment is requested, a traffic commissioner may continue to consider the case if it is considered that the driver presents a significant risk to road safety.</p>	<p>Previously a driver may be given two opportunities to attend a hearing even if they fail to notify the traffic commissioner that they do not intend to attend the first scheduled hearing.</p> <p>This results in additional administration and can lead to the driver taking up available slots on hearing days. This can result in other drivers facing a longer wait for their own hearings.</p> <p>The change enables a traffic commissioner to refuse or revoke a licence on the first hearing where the driver fails to make contact beforehand.</p> <p>It is usual for a traffic commissioner to grant an adjournment to a driver for the first scheduled hearing if there is a justified to doing so.</p> <p>The revised wording clarifies that a traffic commissioner who considers that there is a significant risk to road safety can proceed at the first hearing even if an adjournment request has been received.</p>
72 - 75	Driver conduct hearings	<p>Inclusion of the process where a driver attending before a traffic commissioner may require additional language support during the proceedings.</p>	<p>This inclusion clarifies the process to ensure that drivers can fully understand the procedures at a hearing.</p>

82	Mobile Phones and other electronic devices	Reference to the increased penalty for using a mobile phone that was introduced in 2017 (and associated footnote).	In 2017 the penalty for mobile phone usage was increased to six penalty points and a £200 fine. This reference seeks to clarify how mobile phone offences will be separated from other offences that fall within the same CU80 offence code.
96	Retests	Clarification that a traffic commissioner has no powers over a person's entitlement to drive vehicles other than those which fall within the LGV or PCV regime and that a traffic commissioner cannot take action to prevent a person who received D1 or C1 entitlement as a result of holding an ordinary driving licence prior to 1 January 1997 from using that entitlement.	
98 - 100	Armed Services Personnel	Inclusion of the traffic commissioners' position regarding drivers holding vocational entitlement whilst serving in the armed forces (Annex B details the starting points for sanctions).	<p>Military personnel who apply or hold vocational entitlement are dealt with differently to civilian drivers due to the reasons stated in the inclusion.</p> <p>These processes have not previously been detailed in the Statutory Document No.6 but have been included for this version to improve transparency.</p>
Annex A	Entry Points	<p>Key amendments are:</p> <ul style="list-style-type: none"> • Clarification on the handling of CU80 (mobile phone) offences • Correction to wording on disqualifications by inserting 'and including' on time periods where appropriate, i.e. 'up to and including 12 months' • Drivers with a first disqualification of 36 months or more may be asked to confirm their intentions to a traffic commissioner prior to being called to a hearing 	

		<ul style="list-style-type: none"> • Clarification of the starting points for drivers with one CU80 and one SP10/40 (speeding) offence • Inclusion of starting points for offences or incidences relating to overloading, maintenance and bridge collisions.
Annex B	Entry Points – Military drivers	Inclusion of entry points when considering drivers serving in the armed forces.
Annex C	Aggravating features	Inclusion of a requirement by a court to for an offender to be disqualified until a test is passed.
Annex D	Case Examples	<p>Inclusions of further case examples including¹:</p> <ul style="list-style-type: none"> • Case example 12 – concerns related to alcohol • Case example 17 – persistent and varied offending • Case example 25 – correction of previous error so that the disqualification period reads eight weeks not eight months • Case example 26 – overloading • Case example 27 – overloading • Case example 28 – maintenance • Case example 29 – abuse or aggressive behaviour to officials • Case example 30 – collision with bridge • Case example 31 – collision with bridge
Annex F	Referral of cases	Updated letter from Department for Transport on the referral of non-endorsable offences and third-party notifications
Annex G	Mutual Recognition	Details on mutual recognition on driving disqualifications between the United Kingdom and the Republic of Ireland.

¹ As a result of new insertions the numbering of previous case examples may have changed

Annex A: full list of consultation questions

Question 1

Do you agree with the proposal for commissioners to determine conduct matters on the evidence available, where a driver (who presents a significant risk to road safety) fails to attend a first hearing without giving notice? If you do not, please explain your reasons.

Question 2

Do you agree with the amendments made to the entry points for conduct matters (Annex A)? More generally, do you think the referral and starting points are easy and clear to follow? Do they reflect the right approach for each specific offence?

Question 3

Do you have any comments on the new entry points included for Armed Services Personnel (Annex B)?

Question 4

Do you have any comments on the additional case examples outlined in Annex C? More generally, do you think the case examples are helpful in educating drivers on conduct matters and the consequences of failing to meet the relevant standards as a professional driver?

Question 5

Do you have any comments on the additional guidance around drivers who may require additional language support during proceedings?

Question 6

Do you have any views on how the Statutory Document should be communicated in order to promote the importance of professional driving standards and compliance?

Question 7

Would you find it beneficial for notice to be given of driver conduct hearings and decisions? What is the most effective way that this could be achieved given any restraints on releasing personal information such as driving licence numbers.