



# SENIOR TRAFFIC COMMISSIONER

## Statutory Document No.4

### OPERATING CENTRES, STABLE ESTABLISHMENTS & ADDRESSES FOR SERVICE

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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Issued:

Senior Traffic Commissioner

4 December 2011

## GUIDANCE

1. The Senior Traffic Commissioner for Great Britain issues the following Guidance under section 4C(1) of the Public Passenger Vehicles Act 1981 as to the way in which the Senior Traffic Commissioner believes that traffic commissioners should interpret the law in relation to the requirement to have an operating centre.

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

2. Under section 7 of the Act it is an offence to use a place in any Traffic Area without authority from the traffic commissioner to use that site as an operating centre for vehicles. The site must be specified on the licence. An “operating centre”, is the base or centre at which a Goods vehicle is normally kept. Section 23(6) makes it an offence to contravene any condition attached to an operating centre.
3. A traffic commissioner is obliged to refuse an application or variation application, without considering the merits, unless he or she is satisfied that notice of the application has been published in one or more local newspapers circulating in the locality during the period beginning 21 days before the date on which the application is made and ending 21 days after that date<sup>1</sup>. Section 33 allows, with the permission of the traffic commissioner, for the transfer of an operating centre from one licence to another in prescribed situations<sup>2</sup>. All other applications for an operator’s licence or variation must be published with details of the proposed operating centre and the time and manner for making an objection or representations against the grant of the application. The locality is affected if it contains any place that will be an operating centre if the application is granted<sup>3</sup>.
4. The traffic commissioner does have a discretion not to refuse an application if just the form or contents of the notice of application do not comply with the prescribed requirements, and the traffic commissioner is satisfied that no person’s interests are likely to have been prejudiced by the failure<sup>4</sup>.
5. **Objectors:** the following are entitled to make statutory objections<sup>5</sup> (known as objectors) against the issue of an operators' licence:
  - a Chief Officer of Police;
  - a Local Authority (but not a Parish Council);
  - a Planning Authority;
  - the British Association of Removers;
  - the Freight Transport Association;
  - the General and Municipal Workers Union;
  - the National Union of Rail, Maritime and Transport Workers;
  - the Road Haulage Association;

<sup>1</sup> Section 11(1) & (2), section 18(1) & (2).

<sup>2</sup> See also Statutory Guidance and Statutory Directions on Case Management with regard to applications made under Schedule 4

<sup>3</sup> Section 11(4), section 18(5)

<sup>4</sup> Section 11(3), section 18(4)

<sup>5</sup> Section 12(2), section 19(2)

- the union: Unite;
  - the Union of Shop, Distributive and Allied Workers;
  - the United Road Transport Union.
6. Objectors may oppose the grant of an application or variation application<sup>6</sup>. The grounds for making an objection are that the applicant does not meet the following requirements<sup>7</sup>:
- to be of good repute (standard licence) or unfit (restricted);
  - to have available the required level of finance;
  - to have adequate facilities or arrangements for maintaining the relevant vehicles in a fit and serviceable condition;
  - to have adequate arrangements for securing compliance with the requirements of the law relating to the driving and operation of those vehicles;
  - to have an effective and stable establishment (standard licence);
  - to be of professional competence with a designated traffic manager who meets the requirements<sup>8</sup> (standard licence); or
  - a proposed operating centre will be unsuitable on environmental grounds.
7. Representors: any person who is the owner or occupier of land within the vicinity of a proposed operating centre can make representations<sup>9</sup> against the grant of the application or variation application on the ground that that place will be unsuitable on the grounds that the use of that site as an operating centre would be capable of prejudicially affecting the use or enjoyment of their land. A variation application is any application seeking an increase in the number of vehicles (and trailers if appropriate), or the number of vehicles above a certain weight, to use that operating centre; or to vary any undertaking or condition on the licence relating to that operating centre.
8. Objections and representations must:
- set out the objection or representation;
  - particulars of the ground on which it is made;
  - particulars of any matters alleged by the person making the objection or representation to be relevant to the issue to which it relates.
  - be signed either by the relevant individual, by all of the partners of a firm or by one of them with authority of the others, or for a company or corporate body by one or more authorised persons, or a solicitor acting on behalf of an individual, firm, body or group;
  - a copy must be sent to the applicant on the same day or the next working day after delivery to the traffic commissioner.
9. An objection to an application or variation application must be made during the period commencing immediately after notice of the application is published and ending 21 days after the date on which notice of the application is published in Applications and Decisions.

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<sup>6</sup> Section 12(1), section 19(2)

<sup>7</sup> Sections 13A to D

<sup>8</sup> See Statutory Guidance and Statutory Directions on Transport Managers

<sup>9</sup> Section 12(4), section 19(5)

10. A representation opposing an application or variation application under must be made in the period of 21 days beginning with the date on which notice of the application is published in one or more local newspapers circulating in the locality<sup>10</sup>.
11. The traffic commissioner can, if he or she considers there to be exceptional circumstances, direct that a late objection or representations be treated as made within the prescribed time or in the prescribed manner.
12. Where the traffic commissioner receives an objection and/or representations which meet the requirements the traffic commissioner may refuse an application or variation application on the ground that:
  - the parking of vehicles used under the licence at or in the vicinity of the place in question would cause adverse effects on environmental conditions in the vicinity of that place; or
  - the place in question would be unsuitable for use as an operating centre of the holder of the licence on other than environmental grounds.
13. The traffic commissioner may not refuse an application or variation application on other environmental grounds if:
  - on the date the application was made, that place was already specified on an operator's licence issued by the commissioner as an operating centre of the holder of that licence, or
  - the applicant has produced to the traffic commissioner a certificate<sup>11</sup> stating that its use as an operating centre is or would be lawful.
14. The traffic commissioner must consider every objection or representation which meets the requirements when deciding whether or not to hold a Public Inquiry.
15. A site does not become acceptable just because it forms part of an operating centre which is or has been already specified on an operator's licence or was specified on an interim licence specified by virtue of an interim direction or conditions relating to the exercise of the right of any person to appeal or a review under section 36. A traffic commissioner has power to refuse the application or issue the licence specifying only the site(s) which the traffic commissioner considers suitable.
16. Section 34 of the Goods Vehicles (Licensing of Operators) Act 1995 and regulation 15 of the Goods Vehicles (Licensing of Operators) Regulations 1995 describe the relevant factors in determining:
  - the suitability of any place on environmental grounds for use as an operating centre of the holder of an operator's licence;
  - whether to attach any condition or to vary or remove a condition;
  - the environmental impact of the use of any operating centre.

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<sup>10</sup> Regulations 12 and 13 of the Goods Vehicles (Licensing of Operators) Regulations 1995

<sup>11</sup> Section 191 or 192 of the Town and Country Planning Act 1990, or section 90 or 90A of the Town and Country Planning (Scotland) Act 1972,

**17.** The relevant considerations are as follows:

- the nature and use of any other land in the vicinity and any effect which the use as an operating centre has or would be likely to have on the environment of that vicinity;
- where the proposed site is, or has previously been, used as an operating centre, the extent to which the grant of the application would result in any material change, which would adversely affect the environment of the vicinity;
- where the land has not previously been used as an operating centre, any information known about any planning permission or application for planning permission relating to the land or any other land in the vicinity;
- the number, type and size of motor vehicles or trailers;
- the arrangements for the parking of motor vehicles or trailers;
- the nature and the times of the use of the proposed site;
- the nature and the times of the use of any equipment installed at the proposed site for the purpose of being an operating centre;
- the means and frequency of vehicular ingress to, and egress from, the proposed site.

**18.** In reaching a decision the traffic commissioner is entitled to take into account any undertakings offered by the applicant or licence-holder and any conditions that might be attached to the licence in question, and may assume that any conditions so attached will not be contravened. Any decision must be proportionate. The traffic commissioner may attach any conditions that he or she thinks necessary for preventing or minimising any adverse effects on environmental conditions arising from use of a site as an operating centre.

**19.** The traffic commissioner, however, cannot attach or vary a condition to impose new or further restrictions without first giving the applicant or the licence-holder an opportunity to make representations. Conditions may include restrictions on<sup>12</sup>.

- the number, type and size of motor vehicles or trailers which may be at the proposed site;
- the parking arrangements to be provided at or in the vicinity of the proposed site;
- the times of operation, maintenance or movement of any authorised motor vehicle or trailer and the times at which any equipment may be used for those purposes;
- the means of ingress to and egress from.

**20.** A traffic commissioner may review the grant of operating centre five years from the date of granting the licence and each consecutive period of five years thereafter to consider whether to exercise any of the powers under sections 31 and 32. The notice of review<sup>13</sup> of an operating centre must be served on the Operator at the current correspondence address lodged with the Central

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<sup>12</sup> Regulation 14

<sup>13</sup> See Statutory Guidance and Statutory Directions on Legal Entities and Service

Licensing Office in Leeds within two months of that date<sup>14</sup>. Representations may be made to the traffic commissioner in relation to a review. Those representations must:

- set out the basis of the complaint and contain particulars of any matters alleged by the person making the representations to be relevant to the issue to which they relate<sup>15</sup>;
- clearly identify the person making the representations;
- relate to the relevant operating centre;
- the land or property in the vicinity which is owned or occupied by the person making the representations;
- be signed either by the relevant individual, by all of the partners of a firm or by one of them with authority of the others, or for a company or corporate body by one or more authorised persons, or a solicitor acting on behalf of an individual, firm, body or group.

**21.** The traffic commissioner retains a discretion to treat representations as valid notwithstanding that they were not in the prescribed manner or made within the period of review.

**22.** Section 31 of the Act allows a traffic commissioner to remove an operating centre from a licence on review if satisfied that a site is unsuitable on the grounds:

- that the parking of vehicles used under the licence at or in the vicinity of the place causes adverse effects on environmental conditions in that vicinity. The traffic commissioner may not give this direction unless representations were made during the period of review (subject to exceptional circumstances);
- other than environmental grounds.

**23.** Representations shall be disregarded if any adverse effects on environmental conditions would not have been capable of prejudicially affecting the use or enjoyment of the relevant land.

**24.** If the traffic commissioner does not remove an operating centre section 32 of the Act allows a traffic commissioner to attach additional conditions and may also vary the licence by directing:

- that any vehicle cease to be specified on the licence;
- that the maximum number of vehicles and/or trailers authorised be reduced;
- that there be a restriction on the weight of vehicles and/or trailers; or
- the variation of existing conditions.

**25.** There is special provision for vehicles being used under the terms of The Goods Vehicles (Operators' Licences) (Temporary Use in Great Britain) Regulations 1980 as amended by The Goods Vehicles (Operators' Licences) (Temporary Use in Great Britain) (Amendment) Regulations 1990, which include provision for the use in Great Britain of Northern Ireland vehicles that have an operating centre in Northern Ireland.

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<sup>14</sup> Regulation 17

<sup>15</sup> Section 31(5)(b)

## *Transfer of operating centres*

26. Section 33 and Schedule 4 of the Goods Vehicles (Licensing of Operators) Act 1995 allow for the variation of goods licences where the applicant's (new or applicant for a variation) proposed operating centre is already specified on another operator's licence (excluding interim licences). The requirements relating to publication in the locality and to the making of objections and representations against the issue of the licence do not apply.
27. The site in question must already be specified on an operator's licence as an operating centre<sup>16</sup>. It cannot be a sub-division of that operating centre and no place can be specified on more than the one operator's licence. Where there are conditions or undertakings attached to the existing licence relating to the use of the site the applicant must first consent to those conditions being attached to the licence for those restrictions to apply. In determining the application the traffic commissioner must take account of whether any new adverse effects on environmental conditions are likely to arise from the use of the operating centre and can take account of any other matters he or she considers relevant.
28. The traffic commissioner may refuse the application if any statement of fact made by the applicant was false, whether to his knowledge or not; or any undertaking given or statement of expectation made by the applicant has not been fulfilled.
29. The grant of an interim licence does not give rise to a legitimate expectation such that a traffic commissioner is prevented from taking subsequent action particularly if made clear that further intervention remains an option<sup>17</sup>.

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

30. The position of PSV licences is markedly different from that of goods licences. Section 12 of the Act states that a PSV shall not be used on a road for carrying passengers for hire or reward, except under a PSV operator's licence. In order for a licence to be granted the applicant must have one or more operating centres in the relevant Traffic Area.
31. **Objectors:** Section 14A of the Act provides that where there is an application for a PSV operator's licence any Chief Officer of Police or Local Authority may object to the grant of the licence. That objection must<sup>18</sup>:
  - be in writing;
  - be made within the 21 day period starting the day after the notice of application is published in Notices and Proceedings;
  - set out the basis for the objection;
  - be signed by or on behalf of the person making the objection;
  - a copy must be sent by the objector to the applicant on the day or the next working day after it is made.

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<sup>16</sup> See Statutory Guidance and Statutory Directions on Operating Centres

<sup>17</sup> 2006/149 A & C Nowell

<sup>18</sup> Regulation 5 Public Service Vehicles (Operators' Licences) Regulations 1995

The grounds for making an objection are that the applicant does not meet the following requirements<sup>19</sup>:

- to be of good repute;
- to be of appropriate financial standing;
- to have adequate facilities or arrangements for maintaining the relevant vehicles in a fit and serviceable condition;
- to have adequate arrangements for securing compliance with the requirements of the law relating to the driving and operation of those vehicles;
- to have an effective and stable establishment (standard licence);
- to be of professional competence with a designated traffic manager who meets the requirements<sup>20</sup> (standard licence).

**32.** It follows that although an operating centre address must be provided, a traffic commissioner does not have to approve or review its suitability in the same way that the suitability of a goods vehicle operating centre has to be assessed.

**33.** In considering an application for a PSV operator's licence the traffic commissioner may take into account any undertakings given by the applicant and is entitled to expect those undertakings to be adhered to.

### **Stable Establishment**

**34.** This requirement applies to standard goods and PSV licences only. It is set out at Articles 3 and 5 of Regulation (EC) 1071/2009 (see Annex 1) and requires any undertaking engaged in the occupation of road transport operator to have an effective and stable establishment in a Member State. That establishment must be in the Member State in which it is licenced. This is the address where it must keep its core business documents and in particular accounting documents, personnel management documents, documents containing data relating to driving time and rest periods and any other document to which the traffic commissioner or enforcing authorities may require access in order to verify compliance with the requirements of the licence<sup>21</sup>.

**35.** In practice these documents will be as follows:

- accounts;
- personnel documents;
- tachographs, driver's hours and working time records;
- Driver defect reports;
- Preventative maintenance records;
- Annual test records;
- Prohibitions and related documentation;
- Copies of driving licences;
- Copy of the Transport Manager's certificate of competence;
- any other documentation related to compliance with the operator licence requirements.

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<sup>19</sup> Sections 14ZA to C

<sup>20</sup> See Statutory Guidance and Statutory Directions on Transport Managers

<sup>21</sup> See licence conditions and undertakings



36. The premises must allow the operator to conduct its operations effectively and continuously to meet with the requirements of the licence, including i) any administration necessary for complying with those requirements and ii) appropriate technical equipment and facilities for an operating centre.
37. The requirement is that once an authorisation *has been* granted, the operator must have at its disposal one or more vehicles. This is different from having vehicles specified on a licence but the vehicle(s) in question must be registered and be capable of being put into circulation in conformity with the legislation of that Member State. The vehicle(s) in question may be wholly owned or, for example, held under a hire-purchase agreement or a hire or leasing contract. An informal or unwritten agreement is unlikely to meet this requirement.

### **Case Law**

38. This Guidance may be subject to any decisions of the higher courts and to subsequent legislation. As the legislation suggests the case law is mainly concerned with goods vehicle applications. The Senior Traffic Commissioner has extracted the following principles and examples from existing case law.

#### *General approach*

39. Whilst the Transport Tribunal has set out a general approach to public inquiries involving operating centres the principles can be equally applied to the whole process of considering an application and in particular any opposition. In particular if determining a matter at a public inquiry the Transport Tribunal has stated that: “It would be advantageous...that the presiding Traffic Commissioner at the beginning... sets out the extent of his or her jurisdiction and the nature and type of evidence he or she can and cannot take into account. This may assist in focusing the minds of all participants...upon the evidence that is relevant”<sup>22</sup>. It is also helpful if commissioners and their staff also adopt this approach when considering matters “on the papers” and that objectors and representors are reminded of the limits of commissioners’ powers when they are being notified of commissioners’ decisions or proposed decisions.

#### *Normally kept*

40. A traffic commissioner’s jurisdiction in respect of an operating centre is limited to vehicles authorised by the operator’s licence which are kept there and does not extend to visiting vehicles. The issue of where a vehicle is normally kept when not in use is a question of fact and degree in each case and so it will therefore fall to the traffic commissioner to make the necessary findings<sup>23</sup>. Consequently this is a difficult area and there is little guidance which can be issued in this regard. The Transport Tribunal has found against operators where in one instance a fifth of an operator’s vehicles were parked away from the operating centre on most weekends<sup>24</sup> or outside the operator’s home for a few weeks<sup>25</sup> and where an operator has previously been warned. Whilst considering the drafting of conditions the Upper Tribunal has in other cases relied on the

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<sup>22</sup> 2001/084 GR Way

<sup>23</sup> 2000/14 Reids Transport

<sup>24</sup> 2003/147 W C Hockin

<sup>25</sup> 2006/277 M J Fenlon

dictionary definitions for instance 'occasionally' where an event occurs 'infrequently' and/or 'irregularly'<sup>26</sup>.

41. The requirement to respond to correspondence sent on behalf of the traffic commissioner and to keep the traffic commissioner informed of changes of address is an important one, even where no vehicles are specified. A failure to do so can result in severe action<sup>27</sup>. Section 26(11)(d) gives a traffic commissioner the power to remove any one or more places specified as an operating centre from the relevant licence<sup>28</sup>.

### *Adverts*

42. The Transport Tribunal has been explicit in its decisions regarding adverts: Section 11 of the Act is clear in its terms: namely that a traffic commissioner shall refuse an application without considering the merits unless section 11(2) has been complied with. Section 11(2) requires an applicant to publish a notice of the application in a local newspaper within the period of 21 days before or 21 days after the application is made. This, on first reading, effectively gives operators and applicants an apparently wide 6 week period in which to place a correctly worded advert and it is unsurprising that the Transport Tribunal has felt that it has no alternative other than to interpret the section narrowly.
43. The result of the refusal of the advert is that a completely new application has to be made. This not only adds significantly to the burden on the applicant/operator but also on the staff who will find themselves dealing with an entirely identical application almost immediately. It is only at the point of consideration of the application that the staff will be able to ascertain if the advert falls within the 21 day provision and in cases where it does not in many instances it may be too late for the applicant/operator to re-advertise. Similarly staff may consider adverts that have been placed by the applicant/operator within the 21 day period before the submission of the application and there may be difficulties with this advert and by the time this can be communicated to the applicant/operator the 21 day period cannot be complied with.
44. The Senior Traffic Commissioner does not consider the current situation to be desirable. There must be appropriate time limits for documents to be provided for certain parts of legislation to be complied with but this must be considered along with the effect of a strict interpretation of Section 11. In considering this matter the Senior Traffic Commissioner has also given careful consideration to the purpose of Section 11. It is there to ensure that those who are entitled to make objections and representations against the specification of a proposed operating centre are given proper notice of the application by an advert in the local newspaper. In reality those reading that local newspaper will be highly unlikely to be prejudiced by the acceptance of an advert that falls outside the 21 period by a short period of time.
45. Consequently the Senior Traffic Commissioner now issues the following guidance to traffic commissioners that where an application does not apparently comply with section 11(2) the relevant date is as follows: either (a) the date that the application is first considered by a caseworker or (b) the date of signature of

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<sup>26</sup> 2010/297 W P Commercials

<sup>27</sup> 2005/411 Frank Maas (UK)

<sup>28</sup> 2002/020 HAUC

the application provided that this date is no more than 14 days before the date of actual receipt at the Central Licensing Office.

46. In contrast there is discretion given to the traffic commissioner in relation to the content of the advertisement<sup>29</sup>. But even then adverts must be in the clearest of terms and an advertisement which, for instance, fails to state the correct number of vehicles being applied for, does not fulfil that requirement<sup>30</sup>.
47. The term 'one or more local newspapers circulating in the locality' has not been fully considered or defined in case law and it has therefore proven difficult to ensure a consistency of approach. Furthermore some applicants and operators have chosen to place the advert in some newspapers that are not normally regarded by people living in the locality as the "local" newspaper.
48. The intention of section 11 can be inferred from 11(3), where explicit reference is made to prejudice, namely to potential representors. The intention is therefore to alert owners or occupiers of land within the vicinity. Traffic commissioners will not be criticised where they refuse to accept adverts which do not contain the required information such as the details for lodging representations<sup>31</sup>. Where an applicant declines to employ credible advertising to meet the objects of the statute not only will this result in consequent delay but might also go to issues of fitness and/or to decisions on whether to admit late representations.
49. Where there is a concern that the advert may not have been placed in one or more local newspapers circulating in the locality the matter is to be referred to the traffic commissioner
50. To ensure a consistent approach the Senior Traffic Commissioner now issues the following guidance:
  - for Section 11(2) to be complied with the traffic commissioner must be satisfied that the advert is placed in "one or more local newspapers circulating in the locality".
  - "circulating"<sup>32</sup> is to be interpreted in accordance with its usual meaning and assistance will be obtained from the dictionary definition; - circulation – the public availability of something: the number of copies sold of a newspaper or magazine;

#### *Available*

51. Traffic commissioners cannot and should not become involved with matters of planning law or consent<sup>33</sup>. Certificates of Lawful Use or other permissions from bodies such as the Waste Regulation Authority should be sufficient<sup>34</sup>. A site is available, pending a final determination<sup>35</sup> but it must actually be available at the

<sup>29</sup> 2003/120 JCM Print Services, 2003/169 Project 2000 Europe

<sup>30</sup> 2011/048 Stripestar Ltd t/a Halshaw Burnley Ford

<sup>31</sup> 2009/526 Davis Roofing Ltd

<sup>32</sup> Compact Oxford English Dictionary 3<sup>rd</sup> Edition

<sup>33</sup> Surrey CC v Paul Williams (t/a Garden Materials Landscaping) v SoS for Transport [2003] EWCA Civ 599 on appeal from 2001/56).

<sup>34</sup> 2002/029 T C Atkinson

<sup>35</sup> 2003/087 J Hansford

date of determination not a date in the future<sup>36</sup>. The Transport Tribunal has stated that traffic commissioners should not be invited or expected to investigate or resolve outstanding questions of property law:

“If the operator shows that he is the owner or tenant of the land in question there is no obligation on the Traffic Commissioner to study the title deeds to ensure, for example, that they do not contain a covenant which would prevent the land being used as an operating centre....if it became clear to the Traffic Commissioner that proceedings had been commenced, which would decide whether or not the land could lawfully be used as an operating centre the Traffic Commissioner would need to consider very carefully whether or not it was appropriate to wait until those proceedings had been resolved”<sup>37</sup>. Traffic commissioners must simply be satisfied that the site is ‘available’ for use as an operating centre.

### *Suitable*

- 52.** It is for the applicant to satisfy the traffic commissioner that a proposed site is suitable as an operating centre<sup>38</sup>. Section 13 requires the traffic commissioner to view “suitability as a whole” rather than subject to the limitations on conditions as set out at section 21<sup>39</sup>. There are limitations, however, to the traffic commissioner’s jurisdiction: “matters to do with the condition and suitability of a particular road which inter alia have significance for road safety can also have significance in a totally separate environmental context”<sup>40</sup>. The case law acknowledges that traffic commissioners frequently have a difficult task when dealing with environmental matters and that the situation is exacerbated if planning and highway authorities have chosen not to become involved. In such cases the traffic commissioner should ignore planning or other objections in the absence of the appropriate authority<sup>41</sup>. It is for a Highways Authority to decide whether a public highway is suitable and/or safe for any particular use<sup>42</sup> and the traffic commissioner’s jurisdiction is limited to consideration of access safety at the point the authorised vehicles first join the highway and that otherwise the suitability of the highway and road safety are irrelevant considerations (as is inconvenience caused to other road users) and vibration caused by vehicles passing on the highway travelling to and from the operating centre. It follows that a traffic commissioner cannot refuse an application on the basis of the suitability of a public road<sup>43</sup>.
- 53.** Traffic commissioners should make a distinction between activity on the site lawfully undertaken irrespective of the site being specified as an operating centre and activity incidental to the site being specified as an operating centre. Light pollution and general noise may occur irrespective of whether the site is in fact an operating centre. A traffic commissioner should analyse the evidence carefully and differentiate between those matters which relate to use as an operating centre<sup>44</sup>.

<sup>36</sup> 2010/060 Subic Solutions Ltd

<sup>37</sup> 2004/202 David Holloway

<sup>38</sup> 1998/K30 King Automotive Systems

<sup>39</sup> 1999/L34,37,41 Norman Marshall Ltd v W Sussex CC and Horsham DC and others

<sup>40</sup> 1990/B52 J Simms t/a Ukiston Haulage and Storage v Nottingham CC

<sup>41</sup> 2005/356 Edwards Transport (Shropshire)

<sup>42</sup> 1987/Y17 Scorpio International Ltd v Lancashire CC & South Ribble BC

<sup>43</sup> 2003/157 North Kent Recycling meaning of a road section 58(1) of the Goods Vehicles (Licensing of Operators) Act 1995: highway remains a road even though the public may be temporarily deprived of access to it.

<sup>44</sup> 2008/335 Greaves Surveying and Engineering

## Opposition

- 54.** The status of representations should be considered before a traffic commissioner takes their contents into account. Representations received from a person living some distance away have been dismissed by the Transport Tribunal but may have been admissible if the person was genuinely representing the interests of local inhabitants<sup>45</sup>. There is no definition of 'in the vicinity'. It is for each traffic commissioner to decide in relation to each case. The 'ear shot' test<sup>46</sup> has been extended and visual intrusion can amount to a relevant consideration in the context of assessing the adverse environmental effect of a proposed operating centre<sup>47</sup>. The extent to which adverse environmental effects emerging from the site itself can be heard or felt will sometimes be difficult to decide particularly where similar effect might be caused by other plant or visiting vehicles<sup>48</sup>. A resident living nearest to the site may carry more weight than others who live further away<sup>49</sup>.
- 55.** An objection is valid if made within the prescribed time limit, is clear as to the basis of the objection and gives sufficient detail of the nature of the objection. That being the case the traffic commissioner is bound by virtue of the Goods Vehicles (Licensing of Operators) Regulations 1995 to consider the objection in considering whether or not to hold a public inquiry<sup>50</sup>. The traffic commissioner is not however bound to call a public inquiry<sup>51</sup>.
- 56.** Where the application is opposed on environmental grounds the traffic commissioner must consider whether the application (if granted) is likely within the meaning of regulation 15 of the Goods Vehicles (Licensing of Operators) Regulations 1995 to adversely affect the environment of the vicinity. In relation to any representations or complaint of adverse environmental impact, the matters complained of must amount to a real interference with the comfort or convenience of representors and the matters complained of must be related to the effect which the use of the land as an Operating Centre has, or would be likely to have, on the environment of that vicinity<sup>52</sup>.
- 57.** It is not unusual for a traffic commissioner to receive anonymous information, for instance, about the conduct of operators. The statutory position is that there is a mandatory requirement in s. 12(7) of the 1995 Act for a representation to be made within the prescribed time and in the prescribed manner, both of which are set out in regulations. A representation must be made within 21 days beginning with the date on which the notice of the application was published. In addition to sending a copy of the representation to the traffic commissioner Regulation 11(2) of the 1995 Regulations provides that a copy of the document delivered to the traffic commissioner "shall be sent to the applicant on the same day as, or the next working day after, the delivery to the Traffic Commissioner." Section 12(8) gives the traffic commissioner discretion to treat a representation

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<sup>45</sup> 2004/315 MME Services

<sup>46</sup> 1986/X25 Surrey County Council and Surrey Heath Borough Council v Rupert William Carter & Nicholas David Carter t/a Express Hay & Straw Services

<sup>47</sup> 2001/084 GR Way

<sup>48</sup> 1988/Z37 Ings Transport Ltd and Others

<sup>49</sup> 2008/542 Absolute Scaffolding Services

<sup>50</sup> 2005/145 Norfolk County Council

<sup>51</sup> 2003/145 Norfolk CC v Woodgrove

<sup>52</sup> GR Way (as above)

as “duly made” even though it was not made in the prescribed manner in “exceptional circumstances that justify his doing so”.

- 58.** The traffic commissioner must be alive to the potential problems which might arise if an applicant is not sent a copy of a representation which is considered to have been duly made. Any failure to ensure that the applicant is not fully informed of the substance of any un-copied representation runs the risk that there will be a breach of natural justice<sup>53</sup>. In the alternative the traffic commissioner might request a report from a traffic examiner on technical suitability and if so must then disclose the contents of that report to all parties. The commissioner is then entitled to attach what weight to the report that they see fit. If the anonymous information is not confirmed during the course of the investigation, no further action about that anonymous information should be taken<sup>54</sup>.
- 59.** It is open to the traffic commissioner to admit evidence from local residents who have not met the requirements to be treated as a valid representor by calling them as witnesses<sup>55</sup>. In doing so the traffic commissioner should ensure the fairness of any future proceedings and witnesses may be required to provide statements in advance so that they can be disclosed to the parties<sup>56</sup>. The applicant must have the opportunity to consider and respond to any evidence prior to a decision on the application<sup>57</sup>.

#### *Conditions and Undertakings*

- 60.** It is for the traffic commissioner to make an assessment of the necessity of any restrictions<sup>58</sup>. The Transport Tribunal has indicated that having been to the site the traffic commissioner is in the best position to make an assessment of its suitability as an operating centre<sup>59</sup>.
- 61.** The traffic commissioner has to decide whether the site is suitable for use as an operating centre but may take into account any conditions that could be attached to the licence under section 21 and may assume that any conditions so attached will not be contravened. It is not necessary to wait until those actions are carried out. Whether action is required in order to make a site suitable particularly with regard to ingress or egress or any road (other than a public road) will depend on the individual facts of a particular case<sup>60</sup>. If the work is straight forward and agreed then it might be appropriate for the traffic commissioner to grant with a condition to carry out the proposed improvements. As with any condition the obligation is imposed on the operator. It is for the operator to ensure that it can comply<sup>61</sup>.
- 62.** The power to attach conditions to an operator’s licence only arises once the traffic commissioner has decided to grant an application. It is at that stage that the traffic commissioner should give the applicant an opportunity to make

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<sup>53</sup> 2010/034 WP Commercials

<sup>54</sup> 2005/357 J Bayne & Sons, see Statutory Guidance and Statutory Directions on Case Management

<sup>55</sup> 2005/356 Edwards Transport (Shropshire)

<sup>56</sup> See Statutory Guidance and Statutory Directions on Case Management

<sup>57</sup> J Bayne & Sons (as above)

<sup>58</sup> 2009/515 Les Searle Plant Hire & Sales Ltd

<sup>59</sup> 2001/056 Paul Williams t/a Garden Materials Landscaping

<sup>60</sup> 1999/L11 Malcolm Stonehouse v. Surrey County Council

<sup>61</sup> 2008/407 Surrey CC v Rybak-Rajewski

representations<sup>62</sup>. The traffic commissioner's power to impose environmental conditions under s 23(1) of the 1995 Act can only be exercised if s/he decides to vary the licence and is satisfied that the variation would result in a material change as regards the operating centre or its use which would adversely affect the environment as prescribed by regulation 15(1)(b) of the Goods Vehicles (Licensing of Operators) Regulations 1995. The Upper Tribunal has approved of attempts to clearly define terms used in conditions so that parties are clear about the restrictions<sup>63</sup> giving dictionary meanings to the term 'occasionally' where the occasional need to return outside restricted hours was deemed to be reasonable: an event occurs occasionally if it happens 'infrequently' and/or 'irregularly'. In other words the variation of the condition to permit occasional out of hours movements will not allow the operator to make a habit of returning late.

### *Site visits*

- 63.** "Traffic commissioners decide many applications "on the papers" and it is neither necessary nor practicable for them to conduct site visits as a matter of course when they do so. Recent developments in technology mean that traffic commissioners determining cases "on the papers" are now able to obtain a very clear picture of the proposed operating centre and the surrounding environment. Where a traffic Commissioner has visited the location before reaching a decision is often a matter to which much weight will attach"<sup>64</sup>.
- 64.** In certain circumstances it may be advisable for the traffic commissioner to conduct a site visit and it is for the traffic commissioner to make an assessment of the necessity of any restrictions and this may be possible where the premises are clearly described in plans and photographs<sup>65</sup>. In cases where further action is required in order to make a site suitable there is no requirement on a traffic commissioner to visit<sup>66</sup>. As a traffic commissioner is entitled to take into account work still to be carried out and it is not necessary to wait until those actions are carried out<sup>67</sup> it would be a legal nonsense to suggest that there is a mandatory requirement for a traffic commissioner to visit every site where an application is opposed. However it is regarded as essential for a traffic commissioner to conduct a site visit before presiding over any public inquiry convened with regard to the suitability of the proposed operating centre.

### *Review*

- 65.** Whenever a traffic commissioner determines that an environmental review of an established operating centre is appropriate in order to consider the environmental impact of vehicle operation the reviewing traffic commissioner must carry out a careful balancing of the rights of the operator to continue to operate from an established site and the rights of local residents to quiet enjoyment of their property. This may require a detailed analysis of the evidence be undertaken to determine the precise nature of the complaints and to whom they should be directed<sup>68</sup>.

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<sup>62</sup> 2000/032 T Saunders & Sons

<sup>63</sup> 2010/034 WP Commercials Ltd

<sup>64</sup> Per Rex LJ in Surrey CC v Paul Williams (t/a Garden Materials Landscaping) v SoS for Transport (as above)

<sup>65</sup> 2009/515 Les Searle Plant Hire & Sales Ltd

<sup>66</sup> 1999/L11 Malcolm Stonehouse v. Surrey County Council

<sup>67</sup> 2008/407 Surrey CC v Rybak-Rajewski

<sup>68</sup> 2007/168 M & M International Ltd

## Address for Service, correspondence and contact

66. An important aspect of the trust which lies at the heart of the operator's licensing regime is that the traffic commissioner must be able to rely on an operator having in place<sup>69</sup>:

- addresses at which the operator and transport manager can reliably receive important correspondence (whether from the Office of the Traffic Commissioner, including the Central Licensing Office, an enforcing authority or any other significant source); and
- a system which ensures that correspondence is fully answered, within any time limit which has been set, or else within a reasonable time limit and if documents are requested that they are sent.

Failure to respond might justifiably lead to suspicion that there has been an unauthorised or un-notified change with the result that the traffic commissioner cannot actively regulate<sup>70</sup>. If an operator has been given proper notice of a hearing and fails to attend the operator cannot justifiably complain at a later date<sup>71</sup>.

67. Operators and applicants may be tempted to respond by telephone. As the Upper Tribunal has made clear, this is a mistake and whilst members of the traffic commissioner's staff might follow the sensible practice of recording the gist of the conversation the obligation is on the operator or applicant to respond to any important letters by either sending a letter or an email<sup>72</sup>. In such cases if the operator or applicant is relying on a letter or email that is apparently sent to the Office of the Traffic Commissioner or the Central Licensing Office they will be expected to produce a copy upon request.

68. The legislation sets out requirements for the notification of proceedings<sup>73</sup> which allows service by post or fax to the 'proper address' and in the case of a partnership to any partner. Actual proof that the relevant notice has come to the attention of the person or body concerned is not required<sup>74</sup>. Although a comprehensive approach has been encouraged as with other tribunals there is no requirement to send call-up letters by recorded delivery<sup>75</sup>, any document served by post (properly addressed, prepaid and posted) will be deemed to have been served at the time at which the letter would be delivered in the usual way by post, unless proved otherwise<sup>76</sup>. The operator/applicant is responsible for what happens to the letter once it arrives<sup>77</sup>. A registered address for company or LLP law or other purposes such as the register held by the Charity Commission is just as effective for all other correspondence<sup>78</sup>. It is incumbent on the operator to ensure that the notified address is kept up to date<sup>79</sup>.

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<sup>69</sup> 2010/056 Mohamed Aslam t/a Instant Freight

<sup>70</sup> 2009/488 D&A Lawrence t/a The Roseglan Hotel, 2010/048 Anthony Edwards t/a 'Jim Bertie Ltd'

<sup>71</sup> 2010/036 Suzanne Stoneman t/a Keith Travel

<sup>72</sup> 2010/005 Gary James t/a Gary James Transport

<sup>73</sup> E.g. regulations 19 and 20 and Schedule 4 paragraphs 1, 6, and 7 of the Public Service Vehicles (Operators' Licences) Regulations 1995.

<sup>74</sup> 2000/034 Solent Travel

<sup>75</sup> 2010/043 Stephen Mcvinnie t/a Knight Rider

<sup>76</sup> Section 7 of the Interpretation Act 1978

<sup>77</sup> 2010/047 Nelson Rogers & Francis Rogers t/a Rogers Fencing, 2010/041 Darren Smith t/a DMS Scaffolding

<sup>78</sup> 2009/455 Martini Scaffolding Ltd

<sup>79</sup> 2010/398 Anthony Edwards t/a Jim Bertie Ltd, 2010/051 John Perrin t/a JP Scaffolding



69. A letter inviting the operator/applicant or transport manager to attend a public inquiry should be sent in accordance with the legislative requirements. The provisions in paragraph 15(1) of Schedule 3 of the Goods Vehicles (Licensing of Operators) Act 1995, requiring notification to be served of the right to make representations where action against the transport manager is in contemplation, are directive rather than mandatory<sup>80</sup>. The letter should also invite operators to make representations to the traffic commissioner prior to the inquiry in line with the principles of good regulation. As individual regulators traffic commissioners must take into account the provisions of the Compliance Code and give them due weight in developing policies or principles but are not bound to follow a provision of the Code if a traffic commissioner concludes that the provision is either not relevant or is outweighed by another relevant consideration nor in individual cases. The Code has no application in individual or judicial decisions.
70. There is no requirement on traffic commissioners to engage with applicants and/or operators prior to or during proceedings except within the protections allowed at public inquiry<sup>81</sup>. Traffic commissioners should be wary of being drawn into any process of consultation prior to taking statutory action, in view of their wider duty to the public at large<sup>82</sup> and to the fairness of proceedings

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<sup>80</sup> 2000/059 Dolan Tipper Services

<sup>81</sup> Al-Le Logistics Limited etc. [2010] EWHC 134 (Admin)

<sup>82</sup> R v Falmouth & Truro Port Health Authority ex parte South West Water [2001] QB 445

# DIRECTIONS

## Basis of Directions

- 71.** 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. The aforementioned Guidance relates to matters which may influence decisions in respect of listing, adjournments, disclosure and any other matter ancillary to the final disposal of a case but which might impact on the fairness of proceedings. These Directions are addressed to the traffic commissioners in respect of the approach to be taken by staff acting on behalf of or in support of individual traffic commissioners with regard to operating centres<sup>83</sup> and an effective and stable establishment (for standard licences). They are intended to assist in ensuring the fairness of proceedings.
- 72.** Any decision relating to an operating centre relies on the quality of the submission. Decisions on whether to allow opposition, where it does not meet the criteria, and/or to require a hearing, fall within the discretion of the traffic commissioner<sup>84</sup>. In reaching that decision traffic commissioners are assisted by the case submissions prepared by members of the offices of the traffic commissioners and central licensing office (CLO) staff. A submission should refer the traffic commissioner to the relevant information, should be succinct and refer to the relevant evidence and legal provisions. Case law makes clear there is no requirement on traffic commissioners to engage in discussions with applicants and/or other parties before reaching a preliminary decision on whether to call to a hearing. In dealing with interested parties on behalf of a traffic commissioner, members of staff should keep in mind that it may ultimately be necessary to consider the relevant application at a public inquiry and the need to ensure that those proceedings are fair<sup>85</sup>. Any information to be relied upon should be capable of being disclosed in advance of a hearing or risk an unnecessary adjournment.
- 73.** In the course of processing an application it may be appropriate to request further comments on documents such as responses from the parties and/or a Traffic Examiner's findings. Each communication with a party should specify a given timetable, the steps required and the potential consequences if a party fails to respond. As the case law suggests correspondence should also make clear the extent of the traffic commissioner's jurisdiction.

## Stable Establishment

- 74.** As stated above at paragraphs 30 – 33 the requirement applies to standard licences only and these directions are to be read in conjunction with those paragraphs.
- 75.** The requirement is not intended to impose a disproportionate burden. Where it is suggested that there may be no stable establishment, for instance where all specified vehicles are removed from the licence, it will be for the Central Licensing Office to write to the operator in question seeking an explanation and

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<sup>83</sup> See also Statutory Guidance and Statutory Directions on Case Management with regard to Schedule 4 applications

<sup>84</sup> See Statutory Guidance and Statutory Directions of Delegations and Multiple Licence Holders

<sup>85</sup> See also Statutory Guidance and Statutory Directions on Case Management

to then make a submission to the traffic commissioner. If there is no response or other compliance issues arise then the case should be passed to the compliance team in the local Office of the Traffic Commissioner. Where it is established that the operator fails to meet this requirement this may amount to a breach of condition but it is open to the traffic commissioner to allow the operator a period of up to six months to allow the operator to rectify the situation on a first occasion by demonstrating that the requirement for an effective and stable establishment is now met, but with a warning to prompt future compliance.

## **Operating Centres - Public Service Vehicles**

76. As the legislation in the attached Statutory Guidance suggests no-one apart from relevant authorities and the police has any right of objection and that is at application stage; there is no provision for representors. The traffic commissioner, however, can receive and consider relevant information from any other interested party, including other operators or members of the public. These should be made in writing so that they can be disclosed in advance should the traffic commissioner determine that a public inquiry is necessary. It is up to the traffic commissioner to decide what weight he or she attaches to that opposition.

## **Operating Centres – Goods Vehicles**

### *Objections*

77. The relevant legislation and case law are set out in detail in the Guidance above and these Directions are to be read in conjunction with that Guidance.
78. In addition caseworkers are reminded that environmental objections may be made under the provisions of section 12 (1) (applications) and section 19 (2)(a) & (4)(a) (variations). Objections are not limited to factors that might result in prejudice to the use or enjoyment of the land in question but may include:
- noise;
  - fumes;
  - pollution;
  - vibration;
  - visual intrusion.
79. If the objection meets the requirements i.e. it is properly signed, has been copied to the applicant on the same or next working day after delivery to the traffic commissioner, specifies the grounds on which it is made, the Central Licensing Office may write to the objector seeking particulars of any alleged matters. Staff will then usually write on behalf of the traffic commissioner asking for further information about the proposed use of the operating centre and to seek comments on the matters contained in the objection. The applicant and the objector should be encouraged to try to resolve any possible differences between them through direct liaison.
80. The traffic commissioner may decide that he or she has sufficient information to make an informed decision on the application or may decide to hold a Public Inquiry to hear evidence from both parties before reaching a decision on the

application<sup>86</sup>. If the traffic commissioner considers that he or she has sufficient information to determine the application without a Public Inquiry the traffic commissioner may advise relevant parties of his or her intended decision, they may also be invited to make further representations in writing or request that the matter is considered at Public Inquiry.

### *Representations*

- 81.** The relevant legislation and case law are set out in detail in the Guidance above and these Directions are to be read in conjunction with that Guidance.
- 82.** In addition caseworkers are reminded that the statutory provisions refer to a person who is the owner or occupier of land in the vicinity of any place that might be used as an operating centre. The legislation does not define the term 'vicinity' but based on the case law the Senior Traffic Commissioner has determined that a property which might be prejudiced by the following could be said to be within the vicinity:
  - Noise – from the applicant's vehicles moving in and out of, and while at, the operating centre. This may be intrusive in the neighbourhood, bearing in mind the use of other land in the surrounding area and the intended hours of operation;
  - Visual Intrusion – the effect the parking of vehicles at the operating centre may have on the outlook from a representor's property or land;
  - Vibration – the effect vehicle movements may have, either at the operating centre or on their way in or out of the operating centre;
  - Fumes/Pollution – the effect of fumes from the applicant's vehicles on the use or enjoyment of property.
- 83.** As the legislation suggests the cause of these grounds must be from the use or potential of the relevant site as an operating centre including where vehicles first join a public road on their way to or from the site. Factors such as the use of the public road network are outside the traffic commissioner's jurisdiction. A traffic commissioner may consider that some people who respond to an advertisement live too far away from the operating centre to be affected by it and may not as a result accept their representations as valid.
- 84.** Parish Councils, residents associations and action groups cannot make representations unless they are owners or occupiers of affected land within the vicinity of an operating centre. Groups of residents, Parish Councils, or others who cannot be accepted as representors can consider the merit of approaching statutory objectors, such as local authorities, in order to put their case and ask them to consider making an objection.
- 85.** Petitions can only be accepted if it is clear from the face of the petition who is opposing the application, that they accept all the grounds and that they have all signed or a solicitor acting on behalf of the individual has done so. The substance of the petition must be relevant to all signatories and the full name and address (including post code) should be provided for all signatories. The original of the petition should be made available to the traffic commissioner. Where a petition is received members of staff should submit the contents to the

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<sup>86</sup> See Statutory Guidance and Statutory Directions on Case Management

traffic commissioner to decide whether it can be treated as valid. The traffic commissioner may direct that each signatory be contacted on an individual basis. If the traffic commissioner decides to proceed with a petition then the traffic commissioner may also require one person to be nominated as the contact point.

- 86.** The owners and/or occupiers of land or buildings near an operating centre who feel that the use or enjoyment of their own land would be prejudicially affected by the proposed operating centre use can make representations against the grant of an application. For a representation to be treated as valid it must:
- be made in writing to the Central Licensing Office address shown in the advertisement. There is no set form but the grounds must be clearly stated;
  - be made within 21 days of the date the advertisement appeared in the newspaper;
  - be signed. If an individual makes a representation it must be signed by that person. If it is made by a firm or by a corporate body it must be signed by one or more persons authorised to sign by that group of persons. A solicitor acting on behalf of a representor, be it individual, firm or other group may sign on their behalf.
  - state relevant grounds; and
  - be copied to the applicant on the same day, or next working day, as the representation is made to the traffic commissioner.
- 87.** A representation cannot be treated as valid unless the above requirements have been met or the traffic commissioner is satisfied that there are exceptional circumstances to justify accepting the representations. Examples might include where the owner or occupier of a relevant property has been away from their property for the period of the advert but the traffic commissioner may seek evidence of this absence
- 88.** An applicant should be clear as to what information might be relied upon in opposition to its application. Representations should be acknowledged and, where it is necessary to determine whether the criteria have been met, supplementary information may be sought. Representors should be clear as to whether their opposition is being treated as a valid representation and that they may therefore be involved in future consultation on the application. The applicant will normally be asked for his views on the matters raised by any representors and, where appropriate, he will be asked to liaise direct with representors to see if any differences can be resolved without formal intervention by the traffic commissioner. As suggested above the traffic commissioner may also ask for a VOSA Traffic Examiner to visit and report on the proposed operating centre.
- 89.** The traffic commissioner will then consider if he/she needs to hold a public inquiry to hear the evidence of both sides, i.e. applicant and objectors and/or representors, before reaching a decision or whether the traffic commissioner has sufficient evidence to make a decision. If it is decided to hear the application at a public inquiry the representors will be invited to attend to put their case. If the decision can be made on the basis of the written evidence then CLO staff will be responsible for advising all relevant parties of the outcome. Waiting for responses from the parties can take some time and it is therefore

important that members of staff acting on behalf of the traffic commissioner keep the parties appropriately and accurately informed of developments. It is important that parties do not go to unnecessary expense in addressing opposition where a decision on say the validity of an objector or representor has already been taken.

90. In cases where an applicant has had to re-advertise the traffic commissioner may determine that a representor should respond to the new advert particularly where there has been a change so that the traffic commissioner can be satisfied that their opposition is being pursued. Similarly representors may be required to pursue their opposition by responding to correspondence sent on behalf of the traffic commissioner. If they fail to do so the traffic commissioner is entitled to infer that they have decided not to continue with their opposition.
91. Any case submission to a traffic commissioner should take account of the above and should seek to differentiate between the information which is valid as a representation and that which falls outside the scope allowed to representors and/or the traffic commissioner's jurisdiction. Whilst assessing suitability under section 13 the legislation does not restrict the traffic commissioner to those considerations set out at section 21. The case law does indicate that where planning and highway authorities have chosen not to become involved, the traffic commissioner should ignore planning or other objections in the absence of the appropriate authority. It is for a Highways Authority to decide whether a public highway is suitable and/or safe for any particular use and the traffic commissioner's jurisdiction is therefore limited.
92. Anyone who has made a representation should be advised in writing of the date, time and venue of the Inquiry and be invited to attend. They must be given at least 21 days notice and be asked to confirm in writing whether or not they will be attending.

#### *Adverts*

93. These directions are to be read in conjunction with the Guidance set out above at paragraphs 42 – 50. As a starting point advertisements placed in the local newspaper where planning applications for the locality are published will be deemed to meet the requirements of section 11(2) of the 1995 Act failing which the onus is on the applicant to demonstrate that they have advertised in a suitable newspaper which achieves the statutory intention thereby allowing local residents the opportunity to make representations.
94. The Senior Traffic Commissioner notes that circulation figures of local newspapers indicate that a smaller percentage of the population buy local newspapers in urban areas than in rural areas. For this reason, advertisements in rural newspapers with an apparently low circulation may be as effective as newspapers with an apparently high circulation in urban areas. The effect of this is that whilst the Senior Traffic Commissioner cannot prescribe circulation levels the statutory intention must still be met.
95. Consequently where there is any concern that this might not be the case the matter must be referred to the traffic commissioner

#### *Conditions*

**96.** The traffic commissioner will consider all valid objections and representations received, as well as any other relevant information known about the proposed site and the applicant before making a decision on the application. On making a decision the traffic commissioner may grant the application as applied for, with modifications, and/or he/she can attach conditions, or refuse the application. If the traffic commissioner decides to grant the application, he or she can impose those conditions which he or she considers necessary to:

- prevent or reduce adverse environmental effects, and/or
- prevent authorised vehicles causing danger to the public at any point where vehicles first join a public road on their way to and from an operating centre, and on any private approach road.

**97.** Conditions might cover:

- the number, type and size of authorised vehicles, including trailers, kept at the operating centre for maintenance or parking;
- the parking arrangements for authorised vehicles, including trailers, at or in the vicinity of the operating centre;
- the times when the centre may be used for maintenance or movement of authorised vehicles;
- how authorised vehicles enter and leave the operating centre.

**98.** It is an offence to breach licence conditions and an operator faces criminal penalties in the Magistrates' or Sheriff Court if it does so. Conditions on the use of an operating centre can apply only to the licence holder concerned and the use of vehicles authorised under the licence. A traffic commissioner cannot place restrictions on any vehicles which are visiting the site or are using it for other purposes.

#### *Complaints about existing operating centres*

**99.** In addition to the ability of a traffic commissioner to review a licence where the operator is said to be operating outside the terms of that licence, a traffic commissioner has the opportunity to review the suitability of an operating centre where:

- an operator applies to vary the use of an operating centre;
- or at five yearly intervals, for example if local residents have made complaints within the last 5 years.

**100.** The traffic commissioner has powers to take action at any time if a licence holder is operating outside the terms of his licence, for example by breaking any condition of use that appears on the operator's licence<sup>87</sup>.

**101.** Complaints against an operating centre can be received at any time. In general these are about the use of an existing operating centre or about breaches of any of the conditions or other restrictions under which a licence was issued. A complaint about an operating centre which is specified on a goods vehicle operator's licence can be on either environmental or road safety grounds.

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<sup>87</sup> See Statutory Guidance and Statutory Directions on the Principles of Decision making

**102.** Traffic commissioners require complaints to be made in writing and should:

- state who the complaint is from;
- state the grounds for complaint; and
- identify the operating centre concerned and, wherever possible, give the full address of the operating centre and the name(s) of the operator(s) using the operating centre to which the complaint relates, and if relevant, details of the vehicles, and movements giving cause for concern.

**103.** Members of staff in the Central Licensing Office should acknowledge receipt of a complaint. The person making the complaint should be sent information about the complaints procedure and may be asked to complete a pro-forma in order to obtain sufficient information to supply to the traffic commissioner. The relevant part of the form must be copied to the operator(s) concerned with an invitation to comment on the matters raised. This may also allow an opportunity for the operator to rectify any problems. The traffic commissioner may allow the parties the opportunity to resolve any problems between themselves. Further complaints can be received from the same person at any time leading up to the review date. Complainants must be advised of the next review date and should be informed of the traffic commissioner's decision at that time.

**104.** In the meantime complaints must be registered against the relevant operator's licence. If the complaint does not allege operation outside the terms of his licence it must be filed and considered during the review stage. In the meantime if an operator applies to vary his licence in a way which would impact on the operating centre the operator will have to advertise his intentions in the local press and complainants may make representations against the grant of the variation.

#### *Review of Operating Centres*

**105.** The traffic commissioner may, but is not obliged, to conduct a review of an operating centre every five years commencing with the date when the goods vehicle operator's licence came into force. The review is not automatic and is at the traffic commissioner's discretion. In reaching that decision the traffic commissioner should be referred to any complaints received against an operating centre in the preceding five years.

**106.** Members of staff should write to any person who has made a complaint against an operating centre during the review stage and in advance of the review date to ask for an update and request whether the complainant wishes to pursue their concerns.

**107.** The traffic commissioner will consider the evidence summarised in a case submission and decide whether a review is justified. It is therefore important that members of staff ensure the accuracy of the submission and, by reference to the legislation and any relevant case law, their recommendation. They should communicate the decision to any complainant who has pursued their concerns.

**108.** In conducting a review of an operating centre the traffic commissioner will consider:



- whether the operating centre continues to be suitable for the purposes for which the operator's licence allows it to be used;
- on the basis that it is no longer suitable, whether conditions could be attached or changed which would make it suitable; or
- whether it is incapable of being made suitable by the imposition or changing of such conditions.

**109.** As this suggests, on review of an operating centre the traffic commissioner might attach conditions or vary existing conditions for environmental reasons, such as the times vehicles use the operating centre, or for non-environmental reasons, such as road safety. (The traffic commissioner might also take account of any undertakings offered.) The traffic commissioner can also remove an operating centre from a licence for environmental grounds, but only in limited circumstances on the grounds of the adverse effects of the parking of the operator's vehicles, or for non-environmental reasons.

#### **Schedule 4: Transfer of operating centre(s)**

**110.** An applicant for a licence or an existing operator can apply to a traffic commissioner under Schedule 4 to the Goods Vehicles (Licensing of Operators) Act 1995 to allow an operating centre to be transferred from one licence (the donor licence) to another (the donee licence). If the traffic commissioner agrees to the request there is no need to advertise the application in a local newspaper. It is also not possible for local residents or statutory objectors to object to the application.

#### *Shared Sites*

**111.** Operating centres must not be on a licence other than that of the donor. Traffic commissioners will accept a parking plan which clearly indicates where the vehicles on the applicant's licence will park and where vehicles belonging to other operators park. It must also make it clear that the parking spaces to be used by the applicant/operator are designated for their sole use. A failure to provide this type of plan or a failure to provide a sufficiently detailed plan means that the application must fail and the applicant/operator will have to advertise the application<sup>88</sup>.

#### *Process*

**112.** There are no specific fees chargeable under Schedule 4 application but an administration fee may be applied.

**113.** In the first instance staff must check to see if the requirements of Schedule 4 have been met and in particular:

- The operating centres to be transferred are all on the same licence(s), which must be a valid "live" licence(s).
- The operating centres to be transferred are not on any other licence. (Applications sometimes adopt a mixture; any that are not on the donor licence(s) must be the subject of a separate application.)

<sup>88</sup> See Statutory Guidance and Statutory Directions on Operating Centres

- The application must not exceed the current level of authority i.e. the same number or less of vehicles and, if applicable, trailers as are currently authorised at the operating centre under the donor licence(s).
- The accompanying application form only includes the operating centres for which a direction under Schedule 4 is sought.
- That the donor licence(s) will be surrendered or the operating centre(s) in question will be removed from the donor licence(s) and that there is therefore an alternative.
- That the application form is signed by both a person authorised on behalf of the applicant and a person authorised to sign on behalf of the donor.

**114.** Staff must then check to see if the operating centres have any conditions or undertakings attached to them. If they do, the applicant or operator must accept them in their entirety. Checks must be made to see if the operating centres on the donor licence have any complaints recorded against them or if there is any history of environmental opposition either at the site in question or at neighbouring operating centres within such proximity to the operating centre that the traffic commissioner might consider those matters to be relevant to determination of the application.

**115.** The review date of the donor licence must be identified.

#### *Determining factors*

**116.** If all the administrative requirements above have been met members of staff will submit the application to the traffic commissioner for a decision. It is at the traffic commissioner's discretion whether to issue a direction under Schedule 4. Where all criteria are met, the decision to approve Schedule 4 may be delegated to a Team Leader level. However, in the interests of environmental issues the Senior Traffic Commissioner has directed that any schedule 4 application which will in effect extend a review date for the relevant licence more than three years beyond the current review date cannot be taken under delegated powers. Where the applicant from established and unopposed use of an operating centre that potential representors will not be prejudiced the traffic commissioner may extend the review date beyond three years.

**117.** A decision to refuse a Schedule 4 application must always be referred to the traffic commissioner. The traffic commissioner may not be minded to allow an application which does not require an advert (intended to alert local residents and allow them to voice any opposition) where representation(s), objection(s) or complaint(s) have been received against either the operating centre being applied for, or any other operating centre within the vicinity.

**118.** Staff should write to the applicant/operator within 7 days of their having received the traffic commissioner's decision. There will be one of three outcomes:

- The application has been accepted; or
- Schedule 4 does not apply and the application must be advertised; or
- The traffic commissioner has declined to issue a direction under Schedule 4 and the application must be advertised.

119. Where the application to invoke the provisions of Schedule 4 is refused, the date of the application being received will be taken as the date of the traffic commissioner's decision (i.e., the first point at which the application could be processed), so as to allow the applicant the opportunity to advertise notice of the application.

### **Address for service, correspondence and contact**

120. Operators are obliged to supply and keep up to date the correspondence address to be used by and on behalf of the traffic commissioner. In the case of registered legal entities it might be possible to make further enquiries but the traffic commissioner is under no obligation to do so. Operators who fail to meet this basic administrative requirement are responsible for any consequences.
121. Members of staff are expected to keep a contemporaneous note of any substantive contact with an operator or applicant. Where there is an attempt to convey important information then members of staff should ask the operator or applicant to put this in writing and that request should be logged. Where changes come to light as a result of the self-service function or through other contact again this should be followed up in correspondence.
122. When an operator fails to respond to a first letter a further letter should be sent by first class post with a copy by Recorded Delivery, to all known addresses, including the address of establishment. If there is no reply, action forewarned in the latter letter may then be taken. In order to confirm that a notice has been properly served details of the delivery and signature can be obtained through the postal system used.
123. It is desirable to give operators as much notice of public inquiries as possible. In some cases call-up letters may be sent so as to be received by the recipients 35 days and no later than 28 days before the scheduled date for the public inquiry and in complex cases as much notice as possible should be given. However it is recognised that this is not always possible but it is incumbent on the Commissioners' staff to ensure that at least the statutory 21 day notice period is observed. The call up letter should be sent by first class post with a copy by recorded delivery. The letter should detail the reasons for calling the public inquiry, the evidence that the traffic commissioner will consider and any further information that the commissioner requires from the operator. If the operator does not respond and does not attend the public inquiry it will be for the presiding commissioner to determine if the inquiry can proceed but operators should expect commissioners to proceed on the basis that service was effected by the recorded delivery process.
124. Each legal entity invited to an inquiry should receive a separate letter. The letter, however, must clearly detail which licences are being considered by the traffic commissioner.
125. The letter to a limited company should be addressed to 'The Director(s)'. In the case of a partnership the letter will be addressed to all the named partners on the letter. It is not necessary to send separate letters to each partner as partners have a fiduciary duty to one another but the letter should state that it

must be shown to every partner listed. In the case of a multiple licence holder only one letter covering all licences held is required.

126. Where a public inquiry is heard on environmental grounds a letter should be sent to each valid representor and objector inviting them to attend the inquiry. The letter should include all relevant evidence that the traffic commissioner intends to consider at the hearing.

#### *Use of advisers' contact addresses for operators*

127. In the past some transport consultants have requested that all correspondence relating to their client operators be sent to the consultant's address and as a consequence, neither the traffic commissioners nor the Central Licensing Office has a correct postal address for correspondence for an operator or a transport manager. As a result it may be that an operator or transport manager will not receive essential correspondence such as a calling-in letter or a warning letter from the Office of the Traffic Commissioner. This former practice also does not sit well with the requirement for standard licence holders to have a stable establishment in accordance with Regulation (EC) 1071/2009.
128. This practice is therefore no longer acceptable and, regardless of whether an operator (or applicant) is legally represented or represented by a transport consultant, the operator's (applicant's) own correspondence address should always be obtained and recorded to enable the operator (applicant) to be contacted direct at that address. This will minimise the possibility of an operator (applicant) not receiving essential correspondence, particularly where a solicitor or transport consultant is no longer instructed by the operator (applicant). Where existing advisers still use their own business address as an operator's sole correspondence address, they should be required to supply a separate correspondence address for the operator to the relevant team in the CLO within a given deadline.
129. A practice has developed whereby some advisers who represent applicants for operator licences or existing operators request that all papers for a hearing be sent to the office address of the adviser. This practice has been reviewed. Where a request is received from an adviser who is not a practicing solicitor to send all correspondence to them, copies of correspondence will only be sent to the adviser upon written confirmation from the operator/applicant that the adviser is instructed to act on their behalf. Where they request that correspondence be sent to their advisers (whether practicing solicitors or not) duplicate copies of correspondence will not be sent directly to the operator. It is for the operator to ensure that representatives have the required information.

#### *Use of PO boxes for correspondence*

130. The use of Post Office (PO) boxes is now excluded from the application forms. A PO Box can never be a suitable address to meet the requirement on a standard licence for a stable establishment. In the exceptional event that an application is made for an operator to have a PO Box as a correspondence address this must be referred to the traffic commissioner.

## **ANNEX 1: EU LEGISLATION**

Regulation 5 of the Road Transport Operator Regulations 2011 states that a standard licence constitutes an authorisation to engage in the occupation of road transport operator for the purposes of:

**Regulation (EC) 1071/2009 establishing common rules concerning conditions to be complied with to pursue the occupation of road transport operator repealed Council Directive 96/26 EC and applicable from 4<sup>th</sup> December 2011**

### **Article 3 - Requirements for engagement in the occupation of road transport operator**

(a) have an effective and stable establishment in a Member State;

### **Article 5 - Conditions relating to the requirement of establishment**

In order to satisfy the requirement laid down in Article 3(1)(a), an undertaking shall, in the Member State concerned:

(a) have an establishment situated in that Member State with premises in which it keeps its core business documents, in particular its accounting documents, personnel management documents, documents containing data relating to driving time and rest and any other document to which the competent authority must have access in order to verify compliance with the conditions laid down in this Regulation. Member States may require that establishments on their territory also have other documents available at their premises at any time;

(b) once an authorisation is granted, have at its disposal one or more vehicles which are registered or otherwise put into circulation in conformity with the legislation of that Member State, whether those vehicles are wholly owned or, for example, held under a hire-purchase agreement or a hire or leasing contract;

(c) conduct effectively and continuously with the necessary administrative equipment its operations concerning the vehicles mentioned in point (b) and with the appropriate technical equipment and facilities at an operating centre situated in that Member State.

### **Article 13 - Procedure for the suspension and withdrawal of authorisations**

1. Where a competent authority establishes that an undertaking runs the risk of no longer fulfilling the requirements laid down in Article 3, it shall notify the undertaking thereof. Where a competent authority establishes that one or more of those requirements is no longer satisfied, it may set one of the following time limits for the undertaking to rectify the situation:

(b) a time limit not exceeding 6 months where the undertaking has to rectify the situation by demonstrating that it has an effective and stable establishment;

3. If the competent authority establishes that the undertaking no longer satisfies one or more of the requirements laid down in Article 3, it shall suspend or withdraw the authorisation to engage in the occupation of road transport operator within the time limits referred to in paragraph 1 of this Article.