



Office of the
Traffic Commissioner

Restricted operator licence holders: Level of financial resources

Formal consultation

June 2018

Contents

Foreword	3
How to respond	4
Freedom of Information	5
Introduction	6
Scope	6
Restricted licences: levels of financial resources	8
Background	8
Considerations for the level of financial resources/standing	10
Annex A: Full list of consultation questions	14
Annex B: Requirements for licences	17

Foreword

An operator's financial security is a key pillar of the licensing system which traffic commissioners oversee.

Without it, we cannot grant licences. Where an operator is unable to show that they have access to the right level of financial resources, we have to remove licences.

For standard licence applicants and operators, financial standing levels are set at a fixed amount (in Euros), according to EU regulations. As a result, traffic commissioners do not have any influence on those figures. The amounts change every year for applicants and operators in England, Scotland and Wales, depending on the exchange rate.

For restricted licence applicants and operators, traffic commissioners have decided what level the financial requirement should be set at.

While the figures for standard applicants and operators have fluctuated over the years (both up and down), there have been no changes to the levels for restricted applicants and licence holders since 2004. There was a conscious decision not to place additional burdens on restricted operators, during the period of economic downturn of 2008.

We do, though, recognise the effects of inflationary pressures since the last review of financial levels. This will have increased the cost of maintaining vehicles properly for applicants and operators. It is therefore right that we look again at the levels for restricted applicants and operators and consider whether they need to be revised.

In order to help us do this, we want to hear from industry; from restricted operators as well as other stakeholders in the areas where those operators work.

I therefore invite you to contribute to this consultation and offer your thoughts about the options we are considering.



Richard Turfitt
Senior Traffic Commissioner for Great Britain

How to respond

A number of specific questions have been drawn up on the proposed options we've identified for restricted applicant and operator financial levels. The Senior Traffic Commissioner would particularly welcome the views of stakeholders in these areas but does not expect respondents to answer all of the questions presented. Please feel free to answer only those that you feel are most pertinent.

The questions does not restrict respondents from commenting on any other part of the proposed revised document.

Responses to this consultation can be submitted by email or post to:

Email

sstcconsultations@otc.gov.uk

Post

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

The consultation will run from 11 June to 31 August 2018. Please ensure that your response reaches us before the closing date so that we can consider your comments.

When you respond, please specify if you are doing so as an individual or on behalf of an organisation. If you are responding as an organisation please make it clear the organisation that you represent 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 responsible for licensing and regulating commercial vehicle operators and regulating the conduct of professional drivers in the truck, bus and coach industries.

In performing their licensing and regulatory functions, traffic commissioners act as gatekeepers to those industries.

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

When assessing whether to grant an operator's licence, traffic commissioners must be satisfied the applicant meets the requirements to hold the type of licence for which they have applied and the obligations continue during the lifetime of the licence.

Demonstrating the availability of finance to support operations is a key part of operator licensing. It provides traffic commissioners with reassurances that proper arrangements are in place to make sure vehicles operating under the licence are maintained properly and that other laws relating to the use of the vehicles will be observed.

The levels apply to all holders of the relevant licence. Consistency of approach to the financial levels also helps to promote fair competition in the industry.

Scope

The consultation seeks to gather formal responses from the industry, stakeholders and other interested parties on whether the level of reserves required to demonstrate sufficient financial resources for restricted operator licences should be changed.

The specific areas of interest, as outlined in Annex A, relate to whether the levels should:

- remain the same
- increase in line with the Consumer Price Index since 2004
- increase in line with the Consumer Price Index since 2013
- increase in line with the percentage increase for standard licences since 2014
- increase in line with the percentage increases identified by the Road Haulage Association since 2011
- be standardised with levels set for standard licence holders
- be reduced

Before responding to this consultation you may find it beneficial to review the Statutory Guidance and Statutory Directions that the Senior Traffic Commissioner has produced on Finance. This can be found at:

<https://www.gov.uk/government/publications/traffic-commissioners-finance-december-2017>

Restricted licence holders: financial resources

1. Background

- 1.1 Operators of goods vehicles with a gross plated weight in excess of 3.5 tonnes¹ that are being used for hire or reward or in connection with a business, and operators of public service vehicles being used to carry passengers for hire or reward are generally required to hold an appropriate operator's licence².
- 1.2 There are three main types of operator's licences for both operators of goods vehicles and public service vehicles³ and the licence an operator holds is dependent on the nature of the business that they undertake. The licence types are restricted, standard national and standard international.
- 1.3 Before being granted an operator's licence an applicant must satisfy the traffic commissioner that they meet the requirements to hold that type of licence. Some of the requirements differ for restricted and standard licences, but in all cases include the need to demonstrate a level of financial security. This is to satisfy a traffic commissioner that proper arrangements are in place to ensure that the vehicles used under the licence are maintained in a fit and serviceable condition and that the laws relating to the use of vehicles will be adhered to. Annex B provides more detail on the requirements for both restricted and standard licences.
- 1.4 The requirement to demonstrate the availability of finance does not involve depositing a financial sum as a guarantee but it is a requirement to demonstrate to a traffic commissioner that the applicant or holder of an operator's licence has readily available funds to run their vehicles. The requirement sets out an available figure that is required for the first vehicle authorised under a licence and a smaller figure for each additional vehicle authorised under the licence.
- 1.5 Applicants and holders can demonstrate that they have sufficient financial resources through a number of different sources. These include, but are not limited to, bank statements, unused portions of a confirmed overdraft agreement, credit card accounts, bank guarantee, invoice finance agreements, audited accounts. It is important that the financial documents are in the same name as the applicant or holder. In certain circumstances a traffic commissioner may allow a sole trader or partnership to rely upon a statutory declaration from a third party, this is most commonly where a parent wishes to support a child, or where it is held in the name of one person who has a joint account with a spouse. In the case of a limited company the funds must be held with the company.

¹ In certain circumstances vehicles which are 3.5 tonnes or less also require to be operated under the terms of an operator's licence depending on the size of any trailer being towed.

² See section 2 of the Goods Vehicles (Licensing of Operators) Act 1995 and section 12 of the Public Passenger Vehicles Act 1981.

³ There are four types of licences issued to PSV operators but for the purpose of this consultation we make no reference to Special Restricted licences.

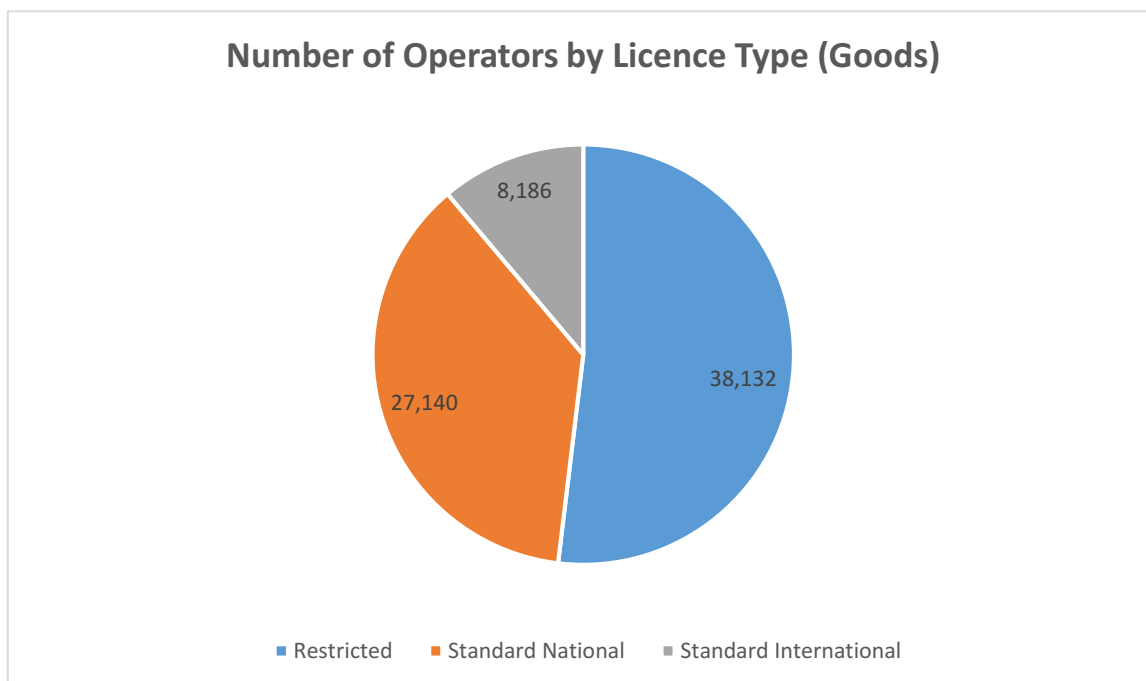
1.6 Table 1 below shows the amounts currently required for both standard and restricted licences:

Licence type	Standard	Restricted
First vehicle	£7,950	£3,100
Each additional vehicle	£4,400	£1,700

Table 1

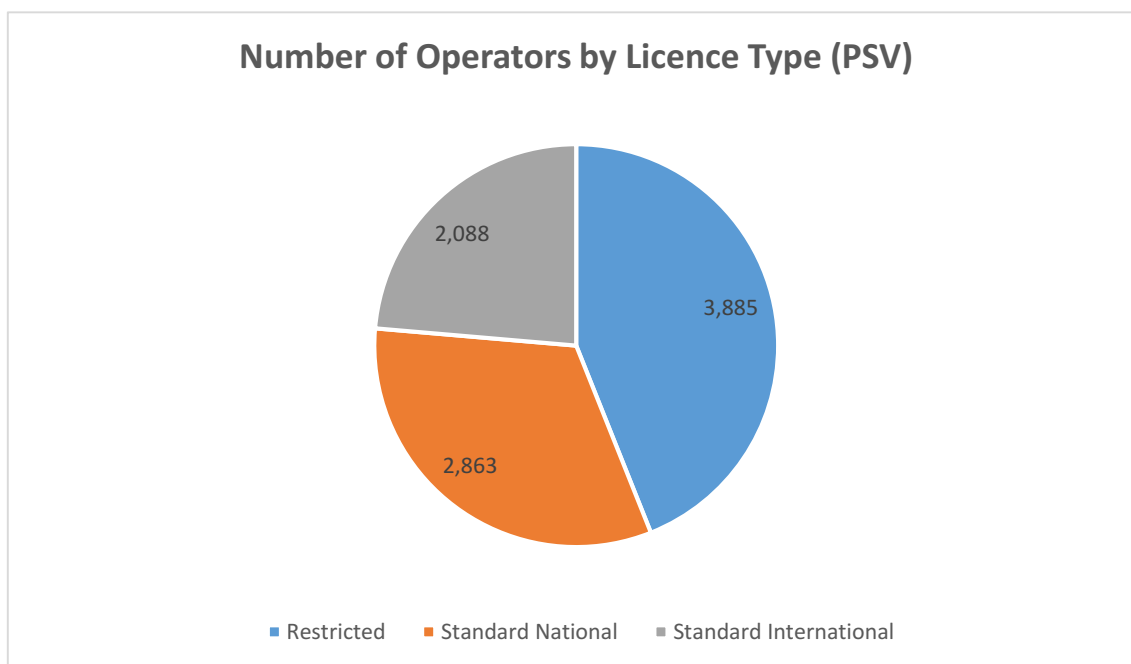
1.7 In 2016/17, just over half of the goods vehicle operator licences held in Great Britain were restricted. The figure was 44% for public service vehicle licences. Diagram 1 and Diagram 2 show the numbers of licence in issue by licence type. These diagrams demonstrate the number of operators that may be affected by any changes to the financial requirements set by the traffic commissioners.

Diagram 1



Source Traffic Commissioners' Annual Report 2016-17

Diagram 2



Source Traffic Commissioners' Annual Report 2016-17

2. Considerations for the Level of Financial Resource / Standing

2.1 The financial standing required by standard licence applicants and operator licence holders are assessed against amounts fixed in European regulations⁴. The figure is set in Euros and is converted to pound sterling according to the exchange rate on the first working day of each October. The revised amounts for the levels for licence holders in Great Britain come into force on 1 January each year. For 2018, they were set at £7,950 for the first vehicle and £4,400 for each additional vehicle.

2.2 Since 2014, there has been a 7.4% increase in the financial standing levels for standard applicants and licence holders. The table below details the level of financial standing required by standard operators in 2018 with the comparable figure in 2014:

	2014	2018
First vehicle	£7,400	£7,950
Each additional vehicle	£4,100	£4,400

2.3 Although restricted applicants and operators fall outside the scope of the European legislation in this area, there remains a requirement on both to satisfy the traffic commissioner they either have sufficient financial resources (goods vehicles) or are of the appropriate financial standing (public service vehicles).

2.4 The levels of financial resources or financial standing (PSV) required for restricted licences are therefore determined by agreement between traffic

⁴ See Article 7 of Regulation (EC) No. 1071/2009

commissioners rather than by legislation. It is the adopted practice for parity between goods and PSV applicants and operators.

2.5 These levels have not changed since 2004 as traffic commissioners have sought not to impose a burden on operators, particularly during the period of economic downturn commencing in 2008 and the continuing uncertainty and low economic growth.

2.6 The effects of inflationary pressures since the last review of restricted operator financial levels will have increased the cost to operators in maintaining their vehicles properly.

2.7 Using the **Consumer Price Index**, we can identify the impact on the figure required for the first vehicle authorised under an operator's licence since 2004 if it had increased in line with the CPI. This is shown in the table below:

Year	Amount Required	Inflation rate %	Inflation cost	New total
2004	3,100	1.64	50.84	3,150.84
2005	3,150.84	1.92	60.49	3,211.33
2006	3,211.33	2.97	95.37	3,306.70
2007	3,306.70	2.12	70.10	3,376.80
2008	3,376.80	3.11	105.01	3,481.81
2009	3,481.81	2.83	98.53	3,580.34
2010	3,580.34	3.73	133.54	3,713.88
2011	3,713.88	4.20	155.98	3,869.86
2012	3,869.86	2.71	104.87	3,974.73
2013	3,974.73	1.99	79.09	4,053.82
2014	4,053.82	0.50	20.26	4,074.08
2015	4,074.08	0.20	8.14	4,082.22
2016	4,082.22	1.60	65.31	4,147.53
2017	4,147.53	2.94	121.93	4,269.46
2018	4,269.46			

Table 2

2.8 Conducting a similar exercise for each additional vehicle in the fleet gives a figure of £2,341. This would be an increase of £600 from the current level of £1700.

2.9 The table below shows the effect on the requirement across a vehicle fleet if the increase in Consumer Price Index were to be applied.

Number of vehicles authorised	Current	Current + Inflation
2	£4,800	£6,610
3	£6,500	£8,951
5	£9,900	£13,633
10	£18,400	£25,338
20	£35,400	£48,748

Table 3

- 2.10 There is an alternative way to identify the increased costs to operators, which is more focussed on the transport industry. The Road Haulage Association produces an **annual haulage cost movement survey** that records the various costs associated with running a haulage business, compared to the previous year.
- 2.11 The information is provided by members and gives a good example of the increase in costs faced by operators and may give an indication at what level to set the requirement for sufficient financial resources.
- 2.12 The table below shows the percentage increase in two of the main costs borne by all operators.

Year	Repair/Maintenance costs % increase on previous year	Tyres/Tubes, etc, % increase on previous year
2011	6.1	15.4
2012	4.04	10.13
2013	4.8	5.2
2014	1.5	2.3
2015	2.0	0
2016	2.0	1.0
2017	3	2.85

Table 4

- 2.13 The effect over the same year period on a baseline figure of £100 in 2011 would be that repair and maintenance costs would have increased to approximately £126 and the cost of tyres, etc, would have increased to approximately £128 by 2017.
- 2.14 A similar percentage increase applied to the £3,100 and £1,700 requirement for financial resources would see the amount required increasing to £3,937 and £2,159 over the course of those seven years, outstripping the impact of the CPI over the same period.

2.15 The table below shows the impact if either the CPI and RHA maintenance costs survey increases since 2011 were applied.

	Current	Increase by CPI	Maintenance cost increase of 27% applied
First vehicle	£3,100	£3,660	£3,937
Each additional vehicle	£1,700	£1,954	£2,159

Table 5

Annex A: Full list of consultation questions

- Q1. Do you agree that it is appropriate that the traffic commissioners consider the level of financial resources required for restricted licences?**

Options under consideration by the Traffic Commissioners for Great Britain

	OPTION	NEW LEVELS	% IMPACT
(a)	Do nothing	£3100 £1700	0%
(b)	Increase (Consumer Price Index since 2004)	£4269 £2341	37% increase
(c)	Increase (Consumer Price Index since 2013)	£3329 £1826	7.4% increase
(d)	Increase (% increase for standard licences since 2014)	£3329 £1826	7.4% increase
(e)	Increase (% increase RHA measure since 2011)	£3937 £2159	27% increase
(f)	Standardise with standard licences	£7950 £4400	£156% increase
(g)	Reduce	N/a	N/a

(a) **Do nothing** - this option would keep the level of available finances needed to demonstrate sufficient financial resources remaining at the current level. This would reduce any potential impact on applicants or holders of restricted licence but does not reflect the additional costs incurred in maintaining the safety of vehicles and ensuring compliance borne by the industry since the time of the last increase

(b) **Increase in line with the Consumer Price Index since 2004** – this would ensure that the purposes of the requirement to have sufficient financial resources are increased in line with general inflationary pressure using a recognised measure. It would increase the requirement to:

£4,269 (an increase of £1,169) for the first vehicle
£2,341 (an increase of £641) for each additional vehicle

This represents a percentage increase of 37% and could have a negative impact on restricted operators

(c) **Increase in line with the Consumer Price Index since 2013** – this is a similar approach to option (b) but limits the impact on restricted operators by making the increase based on the inflation increase over

the last five years – similar to the review period of an operator’s licence. This would result in an increase to:

£3329 for the first vehicle
£1826 for each additional vehicle.

This increases the amount by slightly more than 7%. Although it reduces the negative impact it would not fully cover the increased costs faced by restricted operators since the last rise in the requirement

- (d) **Increase in line with the percentage increase for standard licences since 2014** – this option would result in the 7.4% increase in the requirements for standard licences since 2014 being applied to the current requirement for restricted licences. This would result in a revised requirement of:

£3,329 for the first vehicle
£1,826 for each additional vehicle

The impact on the restricted licence holders would be reduced compared to other alternatives but it would not cover the overall increase in costs since the requirement was last increased in 2004.

- (e) **Increase in line with the percentage increase identified by the Road Haulage Association since 2011** as set out in table 4 above – this option would increase the requirement for restricted licences being increased in line with the average increases identified by the Road Haulage Association since 2011. This would increase the amount required for to:

£3,937 the first vehicle
£2,159 for each subsequent vehicle

This would increase the requirement in line with anticipated costs since 2011 but would not have the negative impact felt by other measures.

- (f) **Standardise the requirement to that for standard licences** – this option would standardise the requirement across all types of licences. As the requirement for a standard licence is set in legislation, it would require the sum for restricted licences to be increased to that currently required for standard licences and maintained at that level thereafter. This has the benefit of standardising the requirement across the industry and may potentially encourage some restricted operators to maximise the returns on their vehicles by obtaining a standard licence as a result of one of the benefits of holding a restricted licence being removed. It does not take into account the different legal definition of appropriate financial standing as opposed to sufficient financial resources. It could have a significant impact on restricted operators with the requirement for the first vehicle increasing by £4,850 and each additional vehicle by £2,700

(g) **Reduce the current figure** – this option would seek to support restricted operators by reducing the requirement currently set down by traffic commissioners. Although this option may reduce the number of licences refused or revoked on financial grounds it does not take into account the legal purpose for an operator to demonstrate sufficient financial resources and may increase the risk to road safety

Q2. From the options identified above, please indicate your preferred option and set out the reasons why.

Q3. If the traffic commissioners choose to increase the level of financial resources required for restricted applicants and operators, would it have an impact on your business? Please explain what impact it would have.

Q4. Do you agree that the traffic commissioners should reconsider the amount to satisfy the financial resources requirement for restricted operators every five years? If you do not agree, please explain your reasons or indicate your preferred review period.

Annex B: Requirements for licences

Requirements for Restricted Licences

A restricted goods vehicle licence entitles the holder to use a goods vehicle on a road for the carriage of goods for or in connection with any trade or business carried on by the holder of the licence, other than that of carrying goods for hire or reward.⁵ There is no limit to the number of vehicles a licence can be granted for provided the traffic commissioner can be satisfied that the requirements are capable of being met.

A restricted public service vehicle operator's licence authorises the use (whether on national or international operations) of public service vehicles not adapted to carry more than eight passengers. In addition, provided certain criteria is met regarding the main occupation of the licence holder and the nature of the business being carried out, a restricted licence may entitle the holder to operate public service vehicles not adapted to carry more than sixteen passengers⁶. In any case, a restricted public service vehicle operator's licence may only authorise the holder to operate a maximum of two vehicles.

Unlike standard operator licences, restricted licences for both goods vehicles and public service vehicles fall outside of scope of the European legislation. For both types of licences there is still a requirement to satisfy a traffic commissioner that they either have sufficient financial resources (in the case of goods vehicles) or that the applicant or holder is of the appropriate financial standing (for public service vehicles). As in the case of standard licences, financial resources must be at the disposal of or within reach of the operator. If the operator has to ask someone else to transfer the money then it is not considered available.

Although the term used for public service vehicles is financial standing and is consistent with the term used for standard licences, it should be noted that for restricted licences this is determined in accordance with paragraph 2 of schedule 3 of the Public Passenger Vehicles Act 1981 whereas for standard licences it is determined by Article 7 of the Regulation (EC) 1071/2009.

Paragraph 2 of schedule 3 sets out financial standing as:

Being of appropriate financial standing in relation to an application for, or holder of, a restricted licence consists in having available sufficient financial resources to ensure the establishment and proper administration of the business carried on, or proposed to be carried on, under the licence.

On application for a restricted goods or PSV operator's licence a traffic commissioner has a discretion to consider whether there are sufficient financial resources for maintaining the authorised vehicles. Once a goods vehicle operator's licence is in force it may be revoked if a traffic commissioner finds that there has been a material change in the holder's financial position and therefore

⁵ See section 3 of the Goods Vehicles (Licensing of Operators) Act 1995

⁶ See section 13 of the Public Passenger Vehicles Act 1981

are no longer in a position to satisfy the requirements⁷. In the case of a public service vehicle operator's licence the licence may be revoked at any time a traffic commissioner considers a restricted licence holder no longer meets the requirement to satisfy financial standing as set out in the legislation⁸.

The purpose of financial resources is more focused than that for financial standing with restricted applicants being required to demonstrate that arrangements for maintenance are not prejudiced by a lack of finance. The Senior Traffic Commissioner has directed that there should be checks on the availability of finance unless the applicant can show an alternative arrangement. In assessing whether an applicant or licence holder has arrangements to meet the continuing requirements to ensure general compliance, traffic commissioners expect there to be a check of the availability of finances as part of ensuring that the arrangements are satisfactory.⁹

Requirements for Standard Licences

There are two types of standard operator's licences that can be issued by a traffic commissioner – standard national or standard international. A standard national licence entitles the holder to operate within the United Kingdom for hire or reward. In addition to national operations, a standard international licence entitles the holder to operate outside of the United Kingdom, subject to holding a Community Licence and any other relevant paperwork.

Applicants and holders of standard licences must meet the requirements set out in Regulation (EC) 1071/2009 (which is reflected in domestic legislation). The requirements include the need to be of the appropriate financial standing with a holder or applicant being able to demonstrate that they can continually meet the requirement to have available access¹⁰ to 9000 Euros for the first authorised vehicle and 5000 Euros for each subsequent authorised vehicle. As the United Kingdom has not adopted the Euro this figure is converted into Pound Sterling using the exchange rate on the first working day of October each year with the revised rate coming into effect on the 1 January the following year¹¹. As this is set in European legislation there is no discretion to amend the requirement.

The case law for standard licences refers to the statutory purpose for the requirement of having financial standing which is to ensure that the holder of an operator's licence, is properly established so that its vehicles are safe to use on public roads, its passengers (PSV) and other road users are not put at risk by them and that it can compete fairly with other operators, within the constraints of the regulatory regime¹².

⁷ See section 26(1)(h) of the Goods Vehicles (Licensing of Operators) Act 1995

⁸ See section 17(3)(d) of the Public Passenger Vehicles Act 1981

⁹ See paragraphs 30 and 31 of Statutory Document No. 2 Finance issued by the Senior Traffic Commissioner

¹⁰ Available access has been defined by the Upper Tribunal as 'capable of being used, at one's disposal, within one's reach, obtainable or easy to get'.

¹¹ See Article 7 of the Regulation (EC) 1071/2009

¹² See Upper Tribunal decision 2011/036 LWB Ltd

If at any time a licence holder cannot satisfy a traffic commissioner that they meet the requirement to be of the appropriate financial standing the traffic commissioner shall direct that the licence be revoked. In some circumstances the traffic commissioner may allow a period of grace, of no more than six months, to allow the licence holder to demonstrate that the appropriate financial standing will be demonstrated on a permanent basis.