



Traffic Commissioners  
for Great Britain

# Consultation on proposed revision to the Senior Traffic Commissioner's Statutory Documents

## Summary of Responses

October 2018

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# Part 1 - Introduction

- 1.1 In September 2016, the traffic commissioners published a set of [strategic objectives](#) to show how they will continue to champion safe, fair and reliable passenger and goods transport.
- 1.2 The strategic objectives outlined a planned review and transformation of the operator licensing regime with the aim of a modern licensing regime aligned with the “digital by default” intentions.
- 1.3 In November 2016 the Driver and Vehicle Standards Agency (DVSA) launched digital services for applicants and holders of goods and PSV operator licences on GOV.UK in support of traffic commissioners.
- 1.4 The introduction of this service – Vehicle and Operator Licensing (VOL) – led to a review of the Senior Traffic Commissioner’s Statutory Documents to clarify the requirements for applications which are submitted digitally. The Senior Traffic Commissioner consulted with the Department for Transport on the document revisions. A number of the documents were then republished in September 2017.
- 1.5 The latest review, undertaken over the last few months, takes a wider view of the guidance and directions and the need for updating. The primary aim is to ensure that the documents reflect legal changes and incorporate recent decisions of the Upper Tribunal, with additional guidance, where appropriate.
- 1.6 The [consultation](#) was published on 16 July 2018 and closed on 27 August 2018.
- 1.7 During the consultation stakeholders were asked to comment on any part of the proposed revised Statutory Guidance and Directions Documents:

Document Number	Document
1	Good Repute & Fitness
2	Finance
3	Transport Managers
4	Operating Centres, Stable Establishments and Addresses for Service
5	Legal Entities
7	Impounding
8	Delegations
9	Case Management

10	Principles of Decision Making
11	Format of Decisions
12	Appeals
13	Small PSV Operations
14	Local Bus Services in England (outside London) and Wales

## Part 2 - Executive Summary

2.1 A total of 13 responses were received. We are grateful for the time respondents took to reply. The Senior Traffic Commissioner has considered all responses and will consider whether to amend the documents.

2.2 Eight consultees responded to some or all of the individual documents contained in the consultation.

<b>Organisation</b>	<b>Number of responses</b>
Trade associations	5
Others	4
Individual	2
Consultant	2
Police Force	0
Road safety charities/campaign groups	0
Operator licence holders	0

2.3 The table below summarises the responses (by group) to the consultation. A more detailed summary of responses to all of the documents is presented in Part 3.

<b>Document</b>	<b>In favour</b>	<b>Further Comments</b>	<b>Don't Know / Unspecified</b>
No 1 Good Repute & Fitness	3	1	9
No 2 Finance	1	2	10
No 3 Transport Mangers	2	1	10
No 4 Operating Centres, Stable Establishments and Addresses for Service	0	0	13

No 5 Legal Entities	1	2	10
No 7 Impounding	0	2	11
No 8 Delegations	0	0	10
No 9 Case Management	1	1	11
No 10 Principles of Decision Making	0	0	13
No 11 Format of Decisions	0	0	13
No 12 Appeals	0	1	12
No 13 Small PSV Operations	1	0	12
No 14 Local Bus Services in England (outside London) and Wales	0	2	11

2.4 The responses generally welcomed the new additions which help make the documents easier to understand and interpret. Some concerns have been raised about how legislation has been interpreted. It should be noted some of the guidance comes directly from Upper Tribunal decisions. The traffic commissioners are sponsored by the Department for Transport, whereas the Upper Tribunal is supported by HM Courts & Tribunal Service, under the auspices of the Ministry of Justice.

2.5 Although not the subject of this consultation, one respondent requested that clickable links be added to the Upper Tribunal decisions referred to in each document. A footnote has been added to Document Number 11 – Format of Decisions which provides a link to published decision resources. The Office of the Traffic Commissioner will consider making amendments to the documents to include links to the specific cases when resources allow.

# Part 3 - Detailed Summary of Responses

## Document Number 1 – Good Repute & Fitness

### Comments

<b>Good Repute &amp; Fitness</b>	
Agreed Proposed Changes	3
Further Comments	1
Don't know / Unspecified	9

- 3.1 There was a positive response to the revised document. The amplification from Upper Tribunal guidance that the operator holds the ultimate responsibility for ensuring compliance was well received.
- 3.2 The examples provided as indicators of relevant evidence for knowledge were welcomed. However, it was noted that whilst this might be appropriate for some of those responsible for managing a business, it may not be required in all cases.
- 3.3 Feedback was provided on the section relating to 'fronting', most of which was published in previous versions of this document. One respondent referred to the term as slang. Another consultee welcomed the warning on the need to be aware of 'fronting' and the need for vigilance in this respect. We consider that as the term is recognised in Upper Tribunal case law and the meaning is understood across the industry it is appropriate to use in the context of guidance and directions.
- 3.4 Another respondent stated that reference to 'Certificate of Professional Competence' should be more inclusive to include the passenger transport sector. The document will be updated to be more comprehensive.
- 3.5 One respondent sought the Senior Traffic Commissioner to issue guidance on consideration of applications relating to community transport. The wider issues related to community transport have been the subject of recent consultation by the Department for Transport.

## Document Number 2 – Finance

### Comments

<b>Finance</b>	
Agreed Proposed Changes	1
Further Comments	2
Don't know / Unspecified	10

- 3.6 One consultee explained that they found the guidance on funds being ‘truly available’ to be of assistance and referred to previous public inquiries where this issue was raised. They also agreed with the view that a period of grace should not be used to merely ‘put off the evil day’.
- 3.7 One respondent was concerned that vehicle assets are excluded from being considered but plant and machinery can be used to demonstrate standing. The Upper Tribunal has ruled on matters relating to finance and the directions and guidance detailed in this document reflects the case law.
- 3.8 One respondent questioned consistency with the Charity Commission regulation and the legal requirements detailed in the document which flow from the case law. An operator who is subject to multiple regulatory regimes must ensure compliance with all of them at all times. They must not place greater importance on one more than the other. Any failure to meet the obligations an applicant agrees to when they apply for an operator’s licence will necessarily lead to the traffic commissioner considering whether there is a need to take regulatory action against the operator.

### Document Number 3 – Transport Managers

#### Comments

<b>Transport Managers</b>	
Agreed Proposed Changes	2
Further Comments	1
Don’t know / Unspecified	10

- 3.9 One consultee refers to the expanded guidance on when transport managers act in name only and how they had encountered a similar situation.
- 3.10 One respondent raised concerns about the need for contracts of employment as the charity sector often use retired professionals who give their time for free. They also commented on transport managers who have a history of short-term appointments, however, this change predates this consultation. Genuine link between the operator and transport manager is the subject of appellate case law.
- 3.11 Another respondent requested more detail be added to the new responsibility under ‘Vehicle – administration’ to differentiate those circumstances when this relates to a matter of compliance or a commercial decision. The responsibility will be clarified to reflect that this relates to circumstances where a lack of contingency could lead to non-compliance.
- 3.12 A respondent would like to see further examples provided under the non-exhaustive list of activities which might constitute ‘Continuous Professional Development’. The respondent would like to see an indication of what is meant by the term ‘sometime’ used in the context of the passage of time since ‘Continuous Professional Development’ was undertaken. This section is deliberately open to interpretation as it is guidance and not directions.



However, to assist readers a starting point for activities has been added and a comparison with the position of drivers to offer a steer.

- 3.13 One of the consultees raises the issue that some transport managers may have only just qualified when considering the production of evidence to demonstrate continuous and effective management. This issue has already been considered by the Upper Tribunal and they have issued guidance in the leading case T 2014 058 Angus Smales.

#### **Document Number 4 – Operating Centres, Stable Establishments and Addresses for Service**

##### **Comments**

<b>Operating Centres, Stable Establishments and Addresses for Service</b>	
Agreed Proposed Changes	0
Further Comments	0
Don't know / Unspecified	13

- 3.14 The respondents raised no additional comments except to welcome changes to the documents generally.

#### **Document Number 5 – Legal Entities**

##### **Comments**

<b>Legal Entities</b>	
Agreed Proposed Changes	1
Further Comments	2
Don't know / Unspecified	10

- 3.15 All responses received related to the guidance issued by Her Majesty's Revenue and Customs on driver employment status.
- 3.16 One respondent raises the issue of volunteer drivers used for hire and reward work and queries HMRC's position that "in road haulage it is rare for someone to be genuinely self-employed". They propose that in respect of small operations it should not be a consideration whether or not the operator employs the driver concerned on contracts of employment. The Senior Traffic Commissioner does not have powers to alter HMRC guidance.
- 3.17 One respondent raises concern as to the approach taken to employment status. They state that there are two angles to employment status: the tax position and the employment rights position and, whereas the draft guidance seems solely concerned with the former, they argue the latter has more relevance to judging whether operators are fit and proper people. What was considered a relevant case was cited. The response claims that formal contract

of employment for drivers will have a negative effect on both bus and truck operators.

3.18 One consultee describes the subject of Legal Entities as complicated and therefore welcomes HMRC's explanation.

## Document Number 7 – Impoundings

### Comments

<b>Impounding</b>	
Agreed Proposed Changes	0
Further Comments	2
Don't know / Unspecified	11

3.19 Both responses focussed on Annex 1 of the document.

3.20 One respondent sought to clarify the recent change to the Goods Vehicles (Licensing of Operators) Regulations 1995 in relation to electric vehicles. These changes will be updated in the final version of the document.

3.21 Both respondents referred to the Annex not being complete as it fails to refer to vehicles not used for hire or reward. The list of exemptions is a direct reference to the exemptions set out in Schedule 3 of the Goods Vehicles (Licensing of Operators) Regulations 1995 where certain vehicles being used for hire or reward or in connection with a business are exempted from the requirement to hold an operator's licence.

## Document Number 8 – Delegations

### Comments

<b>Delegations</b>	
Agreed Proposed Changes	0
Further Comments	0
Don't know / Unspecified	13

3.22 The respondents raised no additional comments except to welcome changes to the documents generally.

## Document Number 9 – Case Management

### Comments

<b>Case Management</b>	
Agreed Proposed Changes	1
Further Comments	1
Don't know / Unspecified	11

- 3.23 One of the respondents referred to the benefits of public inquiries being held in the vicinity of the operation. This comment specifically referred to PSV operations. Traffic commissioners realise the interest that local communities have in proceedings against operators who provide local services or contract work and will consider the location of public inquiries. Traffic commissioners are mindful of the increased cost in holding public inquiries outside of their offices and will balance the benefit with the cost when making the decision on where an inquiry should be held.
- 3.24 The other response focused on the guidance relating to unqualified representatives and likening of the position to that in the courts to 'McKenzie Friends'. The respondent suggested awaiting the response to the Judicial Executive Board's consultation into McKenzie Friends, which closed in June 2016. The consultee would however like to see similar guidance issued for drivers attending driver conduct hearings. The respondent approved of the adoption of the system used by the court whereby the representative sought permission prior to the hearing with the production of a curriculum vitae or other statement setting out their relevant experience. The last update on the consultation came in September 2017 when the Judicial Executive Board said that due to the large number of responses they had decided to establish another working group to review the original proposals in the consultation paper. We do not think it necessary to delay this guidance until the Judicial Executive Board has published a full response.

## Document Number 10 – Principles of Decision Making

### Comments

<b>Principles of Decision Making</b>	
Agreed Proposed Changes	0
Further Comments	0
Don't know / Unspecified	13

- 3.25 The respondents raised no additional comments except to welcome changes to the documents generally.

## Document Number 11 – Format of Decisions

### Comments

<b>Format of Decisions</b>	
Agreed Proposed Changes	0
Further Comments	0
Don't know / Unspecified	13

3.26 The respondents raised no additional comments except to welcome changes to the documents generally.

## Document Number 12 – Appeals

### Comments

<b>Appeals</b>	
Agreed Proposed Changes	0
Further Comments	1
Don't know / Unspecified	12

3.27 One consultee queried the time limit for which a notice of appeal must be received within. The Senior Traffic Commissioner can confirm that the period of time is one month as set out in Part 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008. This was not part of the amendments to this document.

## Document Number 13 – Small PSV Operations

### Comments

<b>Small PSV Operations</b>	
Agreed Proposed Changes	1
Further Comments	0
Don't know / Unspecified	12

3.28 The respondent to this document welcomed the guidance describing it as 'comprehensive' and a useful reference point.

## Document Number 14 – Local Bus Services in England (outside London) and Wales

### Comments

<b>Local Bus Services in England (outside London) and Wales</b>	
Agreed Proposed Changes	0
Further Comments	2
Don't know / Unspecified	11

3.29 Both respondents would like to see further clarification that the changes to the notice period and consultation with the Local Authorities apply to England only, the document will be revised to elucidate this change.

## Part 4 – Senior Traffic Commissioner’s Comments

- 4.1 Changes reflect the actions to adapt the decision making process in response to an increasing litigious environment. The powers of the Senior Traffic Commissioner and traffic commissioners generally are not always well understood. As creatures of statute, our duty is to uphold the law not to make any change to it. In fields such as tax and employment other regulators are responsible for enforcement. The statutory powers under s.4C are aimed at providing guidance and directions to traffic commissioners and staff provided by DVSA.
- 4.2 We publish the documents in order to be transparent about the way we make our decisions. On this occasion the majority of changes are dictated by the case law rather than a debate on policy. The responses received have helped us to try and clarify some of the changes.
- 4.3 There may be superficial attraction towards greater automation but this ignores the strength of the current regulatory system. It also underestimates the trust placed in the skill of traffic commissioners and Office of the Traffic Commissioner staff to make enquiries and assess evidence, using local knowledge to best achieve the regulatory means.