



Appeal No. UA-2022-000059-NT
Neutral Citation number. [2023] UKUT 29 (AAC)

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER (Transport)
TRAFFIC COMMISSIONER APPEALS**

**ON APPEAL from the DECISION of the HEAD of the TRANSPORT REGULATION
UNIT**

Dated 20 January 2022

Before:

Kenneth Mullan	Judge of the Upper Tribunal
Mr David Rawsthorn	Member of the Upper Tribunal
Ms Kerry Pepperell	Member of the Upper Tribunal

Appellant:

Slemish Group Ltd

Attendances:

For the Appellant: None

For the Respondent: None

Type of hearing: Oral hearing
Date of hearing: 29 November 2022
Date of decision: 30 January 2023

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that this appeal be DISMISSED.

SUBJECT MATTER:-

Standard international licence; continuation checklist and declaration; initial failure to specify a vehicle; subsequent specification but vehicle status recorded as 'SORN'; failure to provide evidence relevant to the financial standing requirement; dismissal of surrender application

CASES REFERRED TO:-

NT/2013/82 Arnold Transport & Sons Ltd v DOENI;
NT/2013/52 & 53 Fergal Hughes v DOENI & Perry
McKee Homes Ltd v DOENI [2013] UKUT 618 AAC,
NT 2013/52 & 53; Bradley Fold Travel Ltd & Peter
Wright v Secretary of State for Transport [2010] EWCA
Civ. 695;

REASONS FOR DECISION

1. This is an appeal from the decision of the Head of the Transport Regulation Unit ('TRU') to revoke the Appellant's goods vehicle operator's licence.
2. The TRU is part of the Department for Infrastructure ('the Department')

Background

3. The factual background to this appeal appears from the documents and the Head of the TRU's decision and is as follows:-

- (i) The Appellant is the holder of a standard international goods vehicle operator's licence granted on 21 November 2016 and authorising 3 vehicles.
- (ii) On 23 September 2021 an operator's licence continuation checklist was sent to the Appellant. A completed checklist was subsequently returned together with an operator's licence continuation declaration
- (iii) On 25 October 2021, the Department wrote to the Appellant in the following terms:

'As a result of the amendments made on your checklist, the following documentation is now required:

- Our records show that you do not have a vehicle specified on your licence. As a standard licence holder it is a requirement of Article 5(b) EC Regulation 1071/2009 that your company must be able to prove it has a formal arrangement in place for access at all times to at least one vehicle registered or in circulation in the UK should the application be granted. This could be by specifying a vehicle for use under an operator's licence or by demonstrating that the company has a vehicle available; so vehicles may be either wholly owned or held under a hire-purchase, hire/leasing arrangement or other type of formal arrangement. Please therefore specify a vehicle on the licence or provide a formal agreement to show that the company has access to a vehicle by other means.
- Please confirm who analyses the tachograph records. It is noted that you have submitted Not Known.'

- (iv) A reply to the correspondence of 25 October 2021 was received in the Department on 2 November 2021. It read as follows:

'Slemish Ltd is predominantly a Hire Company, and we had applied for our own O License, so that we were fully covered when using our 7.5t Transporter Lorry for delivering vehicles to customers.

Currently we don't have one as we mostly hire small vans, hence a car transporter trailer is suffice.

I'm not sure what we do in this instance? Maybe you can advise.

We will likely purchase another Truck when we start supplying/hiring our 3.5t Bucket Wagons.

[...] will analyse Tacho Records'

- (v) Further email correspondence was forwarded to the Appellant on 10 November 2021. It read as follows:

'Thank you for your email. I acknowledge your need to not have a vehicle specified on your licence at the moment. However, could you please confirm what arrangement you have in place to secure a vehicle should you require one in the future.

This should include information regarding any lease company's letter of confirmation that the hire company are willing to hire you a vehicle when required. Please see below vehicle requirement regulation for a standard licence holder.

As a standard licence holder it is a requirement of Article 5(b) EC

Regulation 1071/2009 that your company must be able to prove it has a formal arrangement in place for access at all times to at least one vehicle registered or in circulation in the UK should the application be granted. This could be by specifying a vehicle for use under an operator's licence or by demonstrating that the company has a vehicle available; so vehicles may be either wholly owned or held under a hire-purchase, hire/leasing arrangement or other type of formal arrangement. Please therefore specify a vehicle on the licence or provide a formal agreement to show that the company has access to a vehicle by other means.'

- (vi) A reply to the email correspondence of 10 November 2021 was received in the Department on 11 November 2021. It read as follows:

'We would simply purchase one via HP,

We are a Hire Company, and we De-Fleet vehicles including trucks every year, so we would either allocate one of those for our own use, or acquire another either via HP, or on a R&M Contract Agreement with Dennisons or the like.

Hope that is suffice?

Let me know if you need anything else.'

- (vii) On 24 November 2021 correspondence was sent to the Appellant by the Department which read as follows:

'I refer to the company's goods vehicle operator's licence and recent correspondence with the Department about use of, and access to, a vehicle.

The company confirmed it was not using a vehicle and would either allocate a defleeted vehicle for its own use "or acquire another either via HP or on a R&M Contract Agreement with Dennisons".

As the company is not operating a vehicle and does not appear to have done so since the last vehicle was removed from the licence in May 2020, it is in breach of Article 5(b) of EC Regulation 1071/2009, which states:

"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".

The Department is therefore considering making a direction under Section 23(1) and Section 24(1) of the above Act to revoke the operator's licence on the following grounds:

- Section 23(1)(g) that since the licence was issued or varied there has been a material change in any of the circumstances of the licence-holder that were relevant to the issue or variation of the licence; namely that the company is no longer meeting the requirements of Section 12A(2)(a)
- Section 24(1)(a) as the licence holder no longer appears to satisfy the requirement to have an effective and stable establishment under the provisions of section 12A(2)(a) (as determined in accordance with regulations and Article 5 of the 2009 Regulation) as it no longer appears to be operating

In accordance with Section 26(1) the Department is serving notice on you that it is considering making a direction to revoke your company's operator's licence on the grounds detailed above, and to offer you the opportunity to make written representations for the Department's consideration. Any representations must be made in writing and be received at the address shown above by Wednesday 15 December 2021.

The Department, in accordance with Section 26(1) of the 2010 Act, offers you the opportunity to request a public inquiry to offer further evidence as to why the licence should not be revoked. Any request for a public inquiry must be made in writing to the address shown above by Wednesday 15 December 2021 with any accompanying written representations.

If no response to this letter is received by Wednesday 15 December 2021, the operator's licence will be revoked. You will be required to return the operator's licence and UK Licences for the Community to the Central Licensing Office at the above address.

You should note that revocation of the licence would render unlawful the operation of vehicles for which an operator's licence is required. Any such revocation may affect any other current licences or future applications involving anyone named on the licence record.'

- (viii) In correspondence dated 25 November 2021, the Appellant made the following reply:

'Further to your letter dated 24/11/21 we wish to reply as follows:

We had not been operating a vehicle since May 2020 due to the nature of the work we had been undertaking since that time, and to add that we had not notified the Department of same, as we always thought we would be adding a vehicle imminently, which didn't come to fruition since May 2020 unfortunately.

We can now confirm that we have added a vehicle as of today.

We will of course, notify the Department if we no longer plan to operate a vehicle going forward and we now fully understand it is an ongoing requirement to be established as an operator and that if we no longer operate a vehicle in future, we will surrender the licence or request a period of grace, whichever is appropriate for the circumstances,

In hindsight, we should have requested a period of grace, but we were not aware that this was an option.

I await your reply'

- (ix) In correspondence to the Appellant dated 13 December 2021, the Department stated the following:

'I refer to the company's letter of 25 November 2021 in response to our letter of 24 November 2021 proposing to revoke its operator's licence.

It is noted that vehicle SJZ 2400 has been added to the licence. However, gov.uk records show that the vehicle has been SORNed and that the MoT expired on 15 December 2015. You are required to confirm the status of the vehicle. If the vehicle is to be used under the licence it cannot be SORNed and must be taxed with a valid MOT certificate. If the vehicle is not being used, the company would fail to meet the requirements of Section 12A(2)(a) of the above Act and it risks revocation of its licence under Section 24 as a result.

The lack of specified vehicle on the licence for so long also raises concerns about the company's financial standing. Financial standing is a requirement that must be met on a continuous basis. You are therefore required to submit bank statements for the months of September, October and November 2021 showing access to an average of £17,000 for the three authorised vehicles. Please ensure the bank statements are received in our office by no later than Wednesday 29 December 2021 or you risk regulatory action being taken against the licence.

The company may submit other acceptable financial evidence. If it is reliant on an overdraft facility and the amount is not shown on the bank statements, a copy of the agreement will be required showing the account number, amount of overdraft, the date of commencement, and, if an overdraft has been in place for more than a year, evidence of renewal. Further details about acceptable financial evidence is in the Department's practice guidance document 2.'

- (x) An application by the Appellant to surrender the licence was received in the Department on 17 December 2021.

- (xi) In final correspondence dated 20 January 2022, the Department stated the following;

'I refer to our letter of 24 November 2021 proposing to revoke the company's operator's licence in view of concerns about establishment of the company. A vehicle was added to the licence but gov.uk records showed it had been SORNed. The company was asked by letter dated 13 December 2021 to confirm the status of the vehicle and to provide financial evidence because the lack of a specified vehicle raised concerns about whether the company was meeting the financial standing requirement.

An application to surrender the licence was received on 17 December 2021, but we have not received a response to our letter of 13 December 2021.

The Department has considered the company's request to surrender the licence but considers that as it failed to meet the requirements for holding an operator's licence the licence will be revoked with immediate effect under the provisions of Sections 23 and 24 of the 2010 Act on the following grounds:

- Section 23(1)(g) that since the licence was issued or varied there has been a material change in any of the circumstances of the licence-holder that were relevant to the issue or variation of the licence; namely that the company no longer meets the requirements of Section 12A(2)(a)
 - Section 24(1)(a) as the licence holder no longer satisfies the requirement to have an effective and stable establishment under the provisions of section 12A(2)(a) (as determined in accordance with regulations and Article 5 of the 2009 Regulation) as it no longer appears to be operating'
- (xii) An appeal against the revocation decision was subsequently received in the office of the Administrative Appeals Chamber (AAC) of the Upper Tribunal.
4. In correspondence dated 7 February 2022, received in the office of the Administrative Appeals Chamber of the Upper Tribunal on 8 February 2022, the Appellant set out the following grounds of appeal:

'I refer to enclosed letter dated 20/01/2022 noting immediate revocation of O license ON114827S.

A letter had been sent dated 13th Dec 2021 requesting that we confirm status of vehicle we had added to our license, in this instance, it was a recovery 7.5t Lorry. This vehicle has been off the road since Dec 2015, and we had not realised that having no specified vehicle on the license for so long was going to be an issue.

The letter went on to note that if the vehicle is not being used, then we fail to meet the requirements of Section 12A(2)(a) and risks revocation of its license under Section 24 as a result. We feel this is unfair, and the application to surrender the license which we submitted on 17 Dec 21, should be upheld.

Revocation in this instance, we would feel is harsh and unfair, given that we did not have any vehicle on our O License, nor on the road,

We have had the O License for a period of time, and had used it, however more recently, we have had no specific need to operate/have a vehicle noted on our License, but we assumed that it was best to keep it, given the long, extracted process to get an O license in the first instance.

I would imagine that O License revocation takes place in more serious offences, such as driver hours, maintenance records, etc.

We hope you can re-consider in this instance and allow our license to be surrendered as requested.'

5. The appellant was requested to set out the appeal on the relevant form and subsequently did so, setting out grounds of appeal which were parallel to those in the correspondence of 7 February 2022.

The oral hearing of the appeal

6. The appeal was listed for oral hearing on 29 November 2022. The Department had not made an application to be joined as a party to the appeal. There was no appearance by the Appellant.

Relevant legislative provisions

7. Sections 2(1)-(4), 12(2)-5), 12C, 12D, 12E and 17 of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 ('the 2010 Act') provide:

2. “Standard” and “restricted” licences

- (1) An operator's licence may be either a standard licence or a restricted licence.
- (2) A standard licence is an operator's licence under which a goods vehicle may be used on a road for the carriage of goods—
 - (a) for hire or reward, or
 - (b) for or in connection with any trade or business carried on by the holder of the licence.
- (3) A restricted licence is an operator's licence under which a goods vehicle may be used on a road for the carriage of goods for or in connection with any trade or business carried on by the holder of the licence, other than that of carrying goods for hire or reward.
- (4) Notwithstanding subsections (2) and (3), a company may use a goods vehicle on a road for the carriage of goods for hire or reward under a restricted licence instead of a standard licence if (but only if) the goods concerned are the property of a company which is—
 - (a) a subsidiary of the first company,
 - (b) a holding company for the first company, or
 - (c) a subsidiary of a company which is a holding company both for that subsidiary and for the first company.

(d) if the Department thinks fit, whether the requirement of section 12D is satisfied.

12. Determination of applications for operators' licences

- (1) On an application for a restricted licence the Department must consider—
 - whether the requirements of sections 12B and 12C are satisfied; and
 - if the Department thinks fit, whether the requirement of section 12D is satisfied.
- (2) Subsections (1) and (2) are subject to sections 10 (publication of application) and 47(2) (payment of application fee).
- (3) In considering whether any of the requirements of sections 12A to 12D are satisfied, the Department must have regard to any objection duly made under section 11(1)(a) in respect of the application.
- (4) If the Department determines that any of the requirements that it has taken into consideration in accordance with subsection (1) or (2) are not satisfied, it must refuse the application.

12C Requirements for standard and restricted licences

- (1) The requirements of this section are that it must be possible (taking into account the Department's powers under section 14(3) to issue a licence in terms that differ from those applied for) to issue a licence in relation to which subsections (2) to (6) will apply.
- (2) There must be satisfactory arrangements for securing that the following are complied with in the case of vehicles used under the licence—

- (a) Article 56 of the Road Traffic (Northern Ireland) Order 1981 (drivers' hours); and
 - (b) the applicable Community rules, within the meaning of Article 2 of that Order.
- (3) There must be satisfactory arrangements for securing that vehicles used under the licence are not overloaded.
- (4) There must be satisfactory facilities and arrangements for maintaining the vehicles used under the licence in a fit and serviceable condition.
- (5) The licence must specify at least one place in Northern Ireland as an operating centre of the licence-holder, and each place so specified must be available and suitable for use as an operating centre of the licence-holder (disregarding any respect in which it may be unsuitable on environmental grounds).
- (6) The capacity of the place specified as an operating centre (if there is only one) or both or all of the places so specified taken together (if there is more than one) must be sufficient to provide an operating centre for all the vehicles used under the licence.
- (7) In considering whether the requirements of subsections (2) to (6) are satisfied, the Department may take into account any undertakings given by the applicant (or procured by the applicant to be given) for the purposes of the application, and may assume that those undertakings will be fulfilled.
- (8) In considering whether subsection (5) will apply in relation to a licence, the Department may take into account any conditions that could be attached to the licence under section 20(1)(a) (conditions of licences) and may assume that any conditions so attached will not be contravened.
- (9) In considering whether subsection (5) or (6) will apply in relation to a licence, the Department may take into account whether any proposed operating centre of the applicant would be used—
- (a) as an operating centre of the holders of other operators' licences as well as an operating centre of the applicant; or
 - (b) by the applicant or by other persons for purposes other than keeping vehicles used under the licence.

12D. Further requirement for standard and restricted licences

The requirement of this section is that the provision of the facilities and arrangements for maintaining the vehicles in a fit and serviceable condition is not prejudiced by reason of the applicant's having insufficient financial resources for that purpose.

17.— Publication of notice of applications for variation in any locality affected

(1) Subject to subsection (4), the Department shall refuse an application for any of the directions mentioned in subsection (2) without considering the merits unless it is satisfied that subsection (3) has been complied with in respect of each locality affected by the application.

(2) The directions referred to in subsection (1) are—

- (a) any direction under section 16(1)(a) that a maximum number specified in a licence under section 5 be increased;

- (b) any direction under section 16(1)(c) or (e);
- (c) any direction under section 16(1)(g) that a new place be specified in a licence as an operating centre of the licence-holder; and
- (d) any direction under section 16(1)(h) or (i) which might result in a material change in the use of any operating centre of the licence-holder.

(3) This subsection has been complied with in respect of a locality affected by an application if, within the period beginning 21 days before the date on which the application is made and ending 21 days after that date, notice of the application in such form and containing such information as may be prescribed has been published in one or more local newspapers circulating in the locality.

(4) The Department is not required by this section to refuse an application if—

- (a) it is satisfied as mentioned in subsection (1), except that the form or contents of the notice of application as published in any newspaper did not comply with the prescribed requirements; and
- (b) it is satisfied that no person's interests are likely to have been prejudiced by the failure to comply with those requirements.

(5) For the purposes of this section a locality is affected by an application for the variation of an operator's licence if—

- (a) it contains any place that will be an operating centre of the licence-holder if the application is granted; or
- (b) it contains an existing operating centre of the licence-holder and—
 - (i) the granting of the application would or could result in an increase in the number of vehicles, or the number of vehicles above a certain weight, that have that centre as their operating centre; or
 - (ii) any undertaking recorded in, or condition attached to, the licence that the application seeks to have varied or removed relates to that centre.

8. Paragraphs 1 and 2 of Schedule 2 to the Goods Vehicles (Licensing of Operators) Regulations (Northern Ireland) 2012 (the '2012 Regulations') provide:

'1. The information to be given in the notice of application is—

- (a) name of applicant;
- (b) trading name, if any;
- (c) address for receipt of correspondence;
- (d) whether the application is in respect of a new licence, or the variation of a licence;
- (e) the place or places proposed to be used as an operating centre or centres (including, if available, the postal address or addresses);
- (f) the number of motor vehicles and trailers proposed to be kept at each operating centre or centres;
- (g) the number of motor vehicles and trailers now kept, if different; and

(h) in respect of an existing licence, details of any proposed changes to or removal of existing conditions or undertakings affecting an operating centre.

2. Every notice shall contain the following wording—

“Owners or occupiers of land (including buildings) near the operating centre(s) who believe that their use or enjoyment of that land would be affected, should make written representations to the Department stating their reasons, within 21 days of this notice. Representors must at the same time send a copy of their representations to the applicant at the address given at the top of this notice. A Guide to making representations is available from the Department”

Article 3 and 5(b) of Regulation (EC) No 1071/2009 provides:

Article 3

Requirements for engagement in the occupation of road transport operator

1. Undertakings engaged in the occupation of road transport operator shall:

- (a) have an effective and stable establishment in a Member State;
- (b) be of good repute;
- (c) have appropriate financial standing; and
- (d) have the requisite professional competence.

2. Member States may decide to impose additional requirements, which shall be proportionate and non-discriminatory, to be satisfied by undertakings in order to engage in the occupation of road transport operator.

Article 5

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

...

- (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;

General principles on the operation of the Act and Regulations

9. At paragraphs 10 to 13 of the decision in NT/2013/82 Arnold Transport & Sons Ltd v DOENI, the Upper Tribunal set out the following general principles in the operation of the legislative provisions in Great Britain and Northern Ireland:

'Some General Principles

10. An operator's licence can only be granted if the applicant satisfies the Department that the relevant requirements, set out in s. 12 of the 2010 Act as amended, have been met. [The expression Department is used in the legislation but for the purposes of the decisions required to be taken under the legislation it is the Head of the TRU who takes them]. The relevant requirements are now set out in Paragraph 17(5) of the Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012, (“the

Qualifications Regulations), which substitutes a new s.12 and adds ss. 12A-12E to the 2010 Act. The Qualifications Regulations also contain important provisions in relation to Good Repute, Professional Competence and Transport Managers.

11. The grant of an operator's licence does not mean that an operator can then proceed on the basis that the requirements that must be met in order to obtain a licence can thereafter be disregarded. In our view it is clear both from the terms of the 2010 Act and from Regulation 1071/2009 that these are continuing obligations, which an operator is expected to meet throughout the life of the licence. It is implicit in the terms of s. 23, which gives the Department power to revoke, suspend or curtail an operator's licence, that this can take place at any time and for any reasonable cause, including matters covered by the requirements of s. 12 as amended. It is explicit in s. 24, which provides that a standard licence shall be revoked if at any time it appears that the licence-holder is no longer (i) of good repute, (ii) of appropriate financial standing or, (iii) professionally competent. The underlining, in each case is ours. First, we wish to stress that once it appears that the licence-holder is no longer of good repute, or of appropriate financial standing or professionally competent the licence must be revoked because the Act makes it clear that there is no room for any exercise of discretion. Second, the use of the expression 'at any time' makes the continuing nature of the obligations crystal clear.
12. The Tribunal has stated on many occasions that operator's licensing is based on trust. Since it is impossible to police every operator and every vehicle at all times the Department in Northern Ireland, (and Traffic Commissioners in GB), must feel able to trust operators to comply with all relevant parts of the operator's licensing regime. In addition other operators must be able to trust their competitors to comply, otherwise they will no longer compete on a level playing field. In our view this reflects the general public interest in ensuring that Heavy Goods Vehicles are properly maintained and safely driven. Unfair competition is against the public interest because it encourages operators to cut corners in order to remain in business. Cutting corners all too easily leads to compromising safe operation.
13. It is important that operators understand that if their actions cast doubt on whether they can be trusted to comply with the regulatory regime they are likely to be called to a Public Inquiry at which their fitness to hold an operator's licence will be called into question. It will become clear, in due course, that fitness to hold an operator's licence is an essential element of good repute. It is also important for operators to understand that the Head of the TRU is clearly alive to the old saying that: "*actions speak louder than words*", (see paragraph 2(xxix) above). We agree that this is a helpful and appropriate approach. The attitude of an operator when something goes wrong can be very instructive. Some recognise the problem at once and take immediate and effective steps to put matters right. Others only recognise the problem when it is set out in a call-up letter and begin to put matters right in the period before the Public Inquiry takes place. A third group leave it even later

and come to the Public Inquiry with promises of action in the future. A fourth group bury their heads in the sand and wait to be told what to do during the Public Inquiry. It will be for the Head of the TRU to assess the position on the facts of each individual case. However it seems clear that prompt and effective action is likely to be given greater weight than untested promises to put matters right in the future.'

The proper approach on appeal to the Upper Tribunal

10. In NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI, the Upper Tribunal said the following, at paragraph 8 of its decision, on the proper approach on appeal to the Upper Tribunal:

'There is a right of appeal to the Upper Tribunal against decisions by the Head of the TRU in the circumstances set out in s. 35 of the 2010 Act. Leave to appeal is not required. At the hearing of an appeal the Tribunal is entitled to hear and determine matters of both fact and law. However it is important to remember that the appeal is not the equivalent of a Crown Court hearing an appeal against conviction from a Magistrates Court, where the case, effectively, begins all over again. Instead an appeal hearing will take the form of a review of the material placed before the Head of the TRU, together with a transcript of any public inquiry, which has taken place. For a detailed explanation of the role of the Tribunal when hearing this type of appeal see paragraphs 34-40 of the decision of the Court of Appeal (Civil Division) in Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport [2010] EWCA Civ. 695. Two other points emerge from these paragraphs. First, the Appellant assumes the burden of showing that the decision under appeal is wrong. Second, in order to succeed the Appellant must show that: *"the process of reasoning and the application of the relevant law require the Tribunal to adopt a different view"*. The Tribunal sometimes uses the expression *"plainly wrong"* as a shorthand description of this test.'

At paragraph 4, the Upper Tribunal had stated:

'It is apparent that many of the provisions of the 2010 Act and the Regulations made under that Act are in identical terms to provisions found in the Goods Vehicles (Licensing of Operators) Act 1995, ("the 1995 Act"), and in the Regulations made under that Act. The 1995 Act and the Regulations made under it, govern the operation of goods vehicles in Great Britain. The provisional conclusion which we draw, (because the point has not been argued), is that this was a deliberate choice on the part of the Northern Ireland Assembly to ensure that there is a common standard for the operation of goods vehicles throughout the United Kingdom. It follows that decisions on the meaning of a section in the 1995 Act or a paragraph in the Regulations, made under that Act, are highly relevant to the interpretation of an identical provision in the Northern Ireland legislation and vice versa.'

Analysis

11. We can deal with this appeal in short order. We have concluded that the Department's decision cannot be said to be 'plainly wrong'. Based on the evidence which was before it, and the clear factual background, the Department has applied the relevant legislative provisions in the correct manner. The Department could not have arrived at any other decision other than to revoke the licence.

12. We cannot also ignore that the Appellant did not respond to the request to provide evidence demonstrating that the financial standing requirement was met.
13. In these circumstances, the appeal is dismissed.
14. We make the following additional observations. While the decision is not 'plainly wrong', we are of the view that the Department could have engaged with the Appellant in a more positive way in connection with the application to surrender the licence, which was received in advance of the decision to revoke.

A handwritten signature in black ink, reading "Kenneth Mullan". The signature is written in a cursive style and is positioned above a light grey rectangular background.

**Kenneth Mullan, Judge of the Upper Tribunal,
30 January 2023**