



# SENIOR TRAFFIC COMMISSIONER

Statutory Document No.4A

## OPERATING CENTRES & RELATED APPLICATIONS OLYMPIC & PARALYMPIC GAMES 2012

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.

<b>Commencement:</b>	04.12.11
----------------------	----------

<b>Contents:</b>	<b>Page</b>
------------------	-------------

GUIDANCE	2
----------	---

Legislation	2 – 3
-------------	-------

Case Law	3
----------	---

DIRECTIONS	4
------------	---

Annex 1 – Section 16E of the London Olympic and Paralympic Games Act 2006 (as it will be when the amendment is enacted)	5 – 6
---	-------

Issued:	
---------	--

*Beverly Bell*

Acting Senior Traffic Commissioner

15th March 2012

# 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 effective and stable establishment, an operating centre during the relevant period (see paragraph 5).

## **Goods Vehicles Legislation: The Goods Vehicles (Licensing of Operators) Act 1995 London Olympic and Paralympic Games Act 2006.**

2. Under section 2 of the 1995 Act it is an offence to operate a goods vehicle on a road for hire or reward or for or in connection with a business without an operator's licence.
3. Under section 7 of the 1995 Act it is an offence to use a place in any traffic area without authority from the traffic commissioner 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.
4. A traffic commissioner is obliged to refuse any application or any variation application in relation to an operator's licence, 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 (for the same or a reduced vehicle authorisation)<sup>2</sup>. All other applications for an operator's licence or any variation of an existing operator's licence must be published with details of the proposed operating centre, the number of vehicles and/or trailers to be kept there 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>.
5. Save for the Section 33 provision, there is only one other exception to the mandatory requirement to publish any application. A traffic commissioner may consider an application to increase the number of authorised vehicles and/or to remove or vary conditions or undertakings in relation to an existing operating centre without the application being published<sup>4</sup> or advertised<sup>5</sup> where:-

---

<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 16E (3)(a) of the 2006 Act.

<sup>5</sup> Section 16E (3)(b) of the 2006 Act.

- The application is for a temporary change which does not extend beyond the London Olympics period<sup>6</sup>, namely:-
    - which begins four weeks before the day of the opening ceremony of the Games of the Thirtieth Olympiad that are to take place in 2012, and
    - which ends with the fifth day after the day of the closing ceremony of the Paralympic Games 2012,
  - The reason for the application has a connection with the London Olympics<sup>7</sup>.
  - There would not be sufficient time to dispose of the application before the beginning of the London Olympics period<sup>8</sup> or the dates within that period that the application relates to.
  - The circumstances in which the application is being made are such that, but for this section, it could not have been made in sufficient time to be disposed of before the beginning of that period<sup>9</sup>.
6. The potential for a traffic commissioner to attach and/or vary conditions and/or undertakings to the licence for a particular operating centre applies to applications made under Section 16E of the 2006 Act. It follows that the Guidance set out in paragraphs 16 to 19 in the Statutory Guidance and Statutory Direction No. 4 on Operating Centres shall apply to such applications. For the avoidance of doubt all other criteria for the granting of such applications (e.g. financial standing for a temporary increase in vehicle authorisation) must also be satisfied. The only 'concession' by this amendment is the removal of the requirement to advertise and publish the application.

## Case Law

7. Guidance set out in paragraphs 38 to 70 of the Statutory Guidance and Statutory Directions No. 4 on Operating Centres, save insofar as it refers to adverts, opposition and reviews, shall apply to applications under Section 16E of the London Olympic and Paralympic Games Act 2006. As indicated there, the Senior Traffic Commissioner has extracted principles and examples from existing case law but that Guidance may be subject to any decisions of the higher courts and to subsequent legislation.

---

<sup>6</sup> Section 1(3)(c) 2006 Act. The opening ceremony for the Olympic Games takes place on 27 July 2012. The closing ceremony for the Paralympic Games takes place on 9 September 2012

<sup>7</sup> Section 16E (1)(a) of the 2006 Act.

<sup>8</sup> Section 16E (1)(b) of the 2006 Act

<sup>9</sup> Section 16E (1)(c) of the 2006 Act.

# DIRECTIONS

## Basis of Directions

8. 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 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 vehicle authorisation, operating centres and an effective and stable establishment (for standard licences) during the relevant period (see paragraph 5).
9. The Directions set out in Statutory Guidance and Statutory Direction No. 4 on Operating Centres, save insofar as they refer to adverts, opposition, Schedule 4 and reviews, shall apply to applications under Section 16E of the 2006 Act.

## Background.

10. Section 16E is not intended to provide a device to circumvent poor planning by an operator. There is a great deal of published material from London 2012, Transport for London, the Department for Transport, VOSA, the trade bodies and the Office of the Traffic Commissioner on how to meet the challenges of delivering during the London Olympics. Operators are expected to have planned in advance for how the London Olympic and Paralympic Games might impact on their business and to have arrangements in place to meet those challenges.
11. At the same time traffic commissioners recognise that events beyond an operator's direct control may arise. Section 16E is intended as a contingency arrangement to allow abridged notice applications in relation to vehicle authorisation and/or operating centres for a temporary period, where otherwise there would be no flexibility of approach permitted within the scope of the 1995 Act. As this is a contingency arrangement these directions are a starting point for when the traffic commissioner exercises his or her discretion. For the avoidance of doubt the purpose of this amendment to the 2006 Act is to address direct and indirect changes to 'business as usual' as a result of the Games, including changes to the route network and accessibility arrangements. It follows 'a connection' with the Games includes operational disruption as a result of the Games.

## Application Process.

12. The standard application forms are to be used. All queries should be made by e mail to [olympics@otc.gsi.gov.uk](mailto:olympics@otc.gsi.gov.uk) in first instance. Where an operator anticipates a short notice application needs to be made it will assist to accelerate the process if the Central Licensing Office (in Leeds) is notified at the earliest opportunity, including details of the person in the operator's organisation responsible for the application. This will enable resource to be arranged in readiness for receipt of the application. All forms and communications (including envelopes and e mail subject headers) should clearly be marked 'URGENT - OLYMPICS' and provide the operator's licence number. Applications may be hand delivered. If being sent by post it is recommended that recorded or special delivery is used; the postal address is as follows:

## **Decision Process.**

- 13.** The traffic commissioner will need to determine whether the application is properly made pursuant to Section 16E(1) of the London Olympic and Paralympic Games Act 2006. The burden of proof is on an applicant to satisfy the traffic commissioner to show sufficient nexus between the application and the Games. Only if the traffic commissioner is satisfied on that point will he or she proceed to consider the wider merits of the application itself. When making these determinations the traffic commissioner may have regard to:
- The chronology of events leading up to the application.
  - The reasons why the application is needed.
  - The period for which the change is required.
  - Planning actually undertaken by the Operator prior to the Games.
  - The reasons provided by the operator as to why an earlier application was not made.
  - Third party evidence supporting the urgent nature of the application.
  - Does the operator have another unrestricted operating centre it could use for the relevant period?
  - Can the operator's vehicles be away from the operating centre for the relevant period within the definition of 'normally kept'?
  - Does the operator have access to parking in another traffic area?
  - Proposed noise abatement mitigation in relation to operating centres, where appropriate.
  - Balancing the usual criteria for such applications set out in the various Statutory Guidance and Directions with the temporary nature of the change and the importance of the Games.
  - Any other clear and cogent evidence the traffic commissioner deems relevant.
- 14.** Where a traffic commissioner determines that a public inquiry is necessary to determine the application then the periods of time set out in paragraph 123 of the Directions referred to in paragraph 8 above may not be practicable. Early contact with the traffic commissioner by listing staff will be necessary to agree the suitable period of notice in the circumstances.
- 15.** The traffic commissioner designated by colleagues to be the Lead Traffic Commissioner for Games Delivery across Great Britain at the date of issue of these Directions is Miss Sarah Bell, Traffic Commissioner for the West of England. All applications made pursuant to Section 16 E of the 2006 Act should be referred to the Lead Traffic Commissioner or in her absence to a traffic commissioner or to a deputy traffic commissioner nominated by the Lead Traffic Commissioner.

## ANNEX 1

### Section 16E of the London Olympic Games and Paralympic Games 2006 (as proposed<sup>10</sup> in the London Olympic Games and Paralympic Games (Amendment) Bill.)

#### S.16E Goods vehicle operator licences: waiver of procedural requirements

(1) This section applies in a case where, on an application to vary an operator's licence under section 17 of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act"), a traffic commissioner is satisfied that—

- (a) the variation applied for has a connection with the London Olympics,
- (b) there would not, but for this section, be sufficient time to dispose of the application before the beginning of the London Olympics period, and
- (c) the circumstances in which the application is being made are such that, but for this section, it could not have been made in sufficient time to be disposed of before the beginning of that period.

(2) The traffic commissioner may direct—

- (a) that subsection (3) is to apply in relation to the application, and
- (b) if the traffic commissioner proposes to hold an inquiry under section 35 of the 1995 Act in relation to the application, that subsection (4) is to apply in relation to the inquiry.

(3) If the traffic commissioner gives the direction under subsection (2)(a), the following provisions of the 1995 Act do not apply in relation to the application—

- (a) section 17(3) (publication of notice by traffic commissioner);
- (b) section 18 (publication of notice by operator).

(4) If the traffic commissioner gives the direction under subsection (2)(b), Schedule 4 to the Goods Vehicles (Licensing of Operators) Regulations 1995 (S.I. 1995/2869), in its application to the inquiry, has effect as if for sub-paragraph (3) of paragraph 1 there were substituted—

"(3) The traffic commissioner may abridge the periods referred to in sub-paragraphs (1) and (2)."

(5) Section 23 of the 1995 Act (conditions as to use of operating centres) applies in relation to the licence as if the application were an application of which notice has been published under section 17(3) of that Act.

(6) Such variations as are made to the licence on the application, including by the attachment of conditions under section 21 or 23 of the 1995 Act (road safety and operating centres), have effect only during the London Olympics period.

(7) Subsection (3)(a) does not affect the liability incurred in respect of the application under regulation 3 of the Goods Vehicles (Licensing of Operators) (Fees) Regulations 1995 (S.I. 1995/3000) (which requires payment of a fee on an application for variation for which publication is required by section 17(3) of the 1995 Act).

(8) The power to give a direction under subsection (2) includes power to vary or revoke the direction.

---

<sup>10</sup> As at 25 October 2011.

(9) In exercising functions under this section, the traffic commissioner must act under the general directions of, and have regard to guidance given by, the senior traffic commissioner.

(10) In this section, “operator’s licence” has the same meaning as in the 1995 Act (see section 2(1) of that Act).”