

A Guide to Public Inquiries

**This guide contains important information
that you must read**

This guide and other forms and guides concerning operator
licensing are available on line at

www.businesslink.gov.uk/transport

General operating licensing advice can be obtained from the
national contact centre on: **0300 123 9000***

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Public Inquiries

1. WHAT IS A PUBLIC INQUIRY?

- 1.1 A public inquiry is a formal hearing held by a traffic commissioner.
- 1.2 There are three main types of public inquiry - those held to determine licence applications; reviews of operating centres (for goods operator licences only); and those held for regulatory reasons.
- 1.2 At public inquiries to determine an application the traffic commissioner will consider evidence from the applicant and if required any valid opposition to the application. When reviewing an operating centre the traffic commissioner will consider evidence from the operator and any valid complainants. In regulatory cases the traffic commissioner will consider evidence from the operator and usually evidence provided by the Vehicle and Operator Services Agency (VOSA) and/or other regulatory authorities.
- 1.3 In all public inquiries the traffic commissioner may also hear from additional witnesses and, if the traffic commissioner considers it appropriate, may be assisted by a financial assessor.
- 1.4 When a traffic commissioner has received valid opposition (representation and/or objection) to an application, he/she may consider that it is appropriate to hold a public inquiry. This gives all interested parties an opportunity to present their case to the traffic commissioner.
- 1.5 A traffic commissioner may decide that a public inquiry is necessary in order to clarify information that has been received, which raises concerns. Additionally, a traffic commissioner must hold a public inquiry if he/she is considering taking regulatory action against an existing licence and the operator requests a hearing. Furthermore, a traffic commissioner must hold a public inquiry if he/she is considering taking regulatory action against a transport manager's good reputation and/or professional competence.

2. PARTIES TO A PUBLIC INQUIRY

HOW WILL AN OPERATOR/APPLICANT/TRANSPORT MANAGER BE NOTIFIED OF A PUBLIC INQUIRY?

- 2.1 A letter calling you to the inquiry will explain why a public inquiry is being held and give details of the legislation that it has been called under, together with the evidence that the traffic commissioner will

consider. Notification of a public inquiry will be dispatched giving at least 21 days notice in relation to an existing goods operator's licence or application, 14 days in relation to an existing passenger operator's licence or application and 28 days notice in relation to a public inquiry relating to a transport manager.

HOW DO OBJECTORS/REPRESENTORS/COMPLAINANTS KNOW IF A PUBLIC INQUIRY IS TO BE HELD?

- 2.2 For goods operator licences objections can be made by statutory objectors such as local authorities, planning authorities, the police, and certain trade associations and trade unions. They may object to the grant of a goods licence application on the grounds of repute or fitness to hold a licence, financial standing, concerns about the operator's arrangements for vehicle maintenance and drivers' hours' compliance, the professional competence of the operator and on the environmental and general suitability of an operating centre.
- 2.3 Owners and occupiers of land or buildings near an operating centre who feel that the use or enjoyment of their own land would be adversely affected by the proposed operating centre use have a right to make their views known to a traffic commissioner. They are called representors; representations can be made only on environmental grounds.
- 2.4 Unlike objections which are made in response to applications, complaints can be made at any time by anyone. A complaint about an authorised operating centre can be on either environmental or road safety grounds. The traffic commissioner can only take immediate action if it is considered that the operator concerned is operating outside the terms of his/her licence. Otherwise the traffic commissioner can only act at what is known as the 'Review Date'.
- 2.5 Anyone who has made a valid objection or representation will be advised in writing of the date, time and venue of the Inquiry and be invited to attend. They will be given at least 21 days notice and be asked to confirm whether or not they will be attending.
- 2.6 For passenger operator licences objections can be made by statutory objectors such as the police and local authorities. They may object to the grant of a passenger licence application on the grounds of repute or fitness to hold a licence, financial standing, concerns about the operator's arrangements for vehicle maintenance and drivers' hours' compliance and the professional competence of the operator.

WHO SHOULD ATTEND THE PUBLIC INQUIRY

- 2.7 If the operator/applicant is a sole trader or partnership (including a limited liability partnership), the owner or partners should attend the inquiry. In the case of a company or LLP, at least one director should attend. If the company or LLP wishes to send a senior representative it should seek permission from the traffic commissioner and will need to provide written authorisation from the board of directors to represent the company at the inquiry. An inquiry may be adjourned should this authorisation not be provided. Failure to attend the inquiry could result in the traffic commissioner determining the case in your absence.
- 2.8 There is no provision to apply for the costs or expense of attendance at a public inquiry and the traffic commissioner has no power to make any such award.
- 2.9 In the case of an application it is for the objector/representor to decide whether they wish to attend the public inquiry. The traffic commissioner may attach less weight to their opposition to the application if the applicant does not have the opportunity to question the basis of the opposition.
- 2.10 All those who appear at an inquiry may ask someone to represent them at that inquiry. This can be by a barrister or a solicitor, or if the traffic commissioner agrees, by anyone else, including a transport consultant. There is no duty solicitor present at the inquiry nor is 'Legal Aid' available for representation. It is for you to consider whether to seek independent advice as soon as possible after receiving the letter notifying you of the public inquiry. A traffic commissioner is unlikely to accept a request to adjourn the inquiry on the day on the grounds that you now wish to be represented.
- 2.11 Your representative should be familiar with the facts of the case and the traffic commissioner should be advised in advance of the name of the person who will be attending. If you decide to be represented, you should pass the letter calling you to the inquiry to your representative as soon as possible to allow sufficient time for proper preparation of your case.

Where an applicant/operator and/or transport manager is called to a public inquiry they MUST attend whether or not they intend to be professionally represented.

WHAT HAPPENS IF I CANNOT ATTEND?

- 2.12 If an operator/applicant and/or transport manager cannot attend on

the date given for the public inquiry they should request an adjournment. Hearings will not usually be adjourned unless there is a good and compelling reason to do so. The traffic commissioner will therefore need to know the reasons why the relevant person cannot attend. Where for instance there is a pre-booked holiday the traffic commissioner may ask for evidence that it was booked before the date of the letter calling that person to the public inquiry. A traffic commissioner is not automatically bound to accept a medical certificate. Requests for adjournments on medical grounds must be supported by medical evidence which states if and why a person cannot attend a hearing.

3. THE HEARING

SPECIFIC REQUIREMENTS

- 3.1 If anyone attending the inquiry has any specific requirements or needs to be taken into account e.g. for religious purposes, wheelchair access, hearing or sight impairment, or if you need an interpreter, please notify the Office of the Traffic Commissioner at least two weeks before the date of the inquiry in order that the necessary arrangements can be made.

ARRIVAL AT THE VENUE

- 3.2 It is advisable to arrive at the venue at least 30 minutes before the inquiry is due to start and to bring any correspondence informing you of the inquiry together with any case papers that were sent to you with the letter and any other documents which may have been requested or you consider useful. Objectors/representors/complainants should ensure that they have registered their attendance with the Public Inquiry Clerk who will make a note of names of people attending, and of those who want to speak at the Inquiry. Any failure to register could result in losing the opportunity to be heard.

You may be asked to produce photographic identification, such as a passport or driving licence, to confirm your identity. Failure to present the required identification may lead to the traffic commissioner adjourning the public inquiry. If you are uncertain as to what identification is acceptable you should contact the Office of the Traffic Commissioner for clarification.

- 3.3 The Public Inquiry Clerk will advise you where to sit and will try to answer any questions that you may have about the proceedings. The actual start time may depend on other cases listed for hearing that day. Please ensure that your mobile phone is switched off before you enter the public inquiry room.

THE PROCEEDINGS

- 3.4 These proceedings are formal hearings and persons attending are expected to show respect to others and for the proceedings themselves. The traffic commissioner should be addressed as Sir or Madam, depending on their gender, or simply as 'Commissioner'.
- 3.5 Evidence is not given under oath but witnesses are required to tell the truth at all times. Failure to do so could lead to fitness and repute to hold a licence or to act as a transport manager being considered by the traffic commissioner, or impact on the weight given to that person's evidence. Furthermore the giving of false evidence to a traffic commissioner could refer to the matter being referred to the police and criminal charges could follow.
- 3.6 The inquiry is open to members of the public and any other interested parties. The traffic commissioner will consider, on request, whether to hear certain sensitive evidence in private session, e.g. financial information or personal medical information.
- 3.7 After the clerk has announced the case and given brief details, the traffic commissioner will outline the nature of the proceedings to ensure that everyone understands why it is taking place and the procedures to be followed.
- 3.8 Everyone who is entitled to give evidence, make submissions, or make representations will be given the opportunity to speak and to ask questions. It is for the traffic commissioner to determine what is relevant for the purposes of the proceedings. Anyone giving evidence to the inquiry can expect to be asked questions by the applicant/operator, or by a representative acting on their behalf. The traffic commissioner will also put questions to all parties.
- 3.9 When considering an application the traffic commissioner will have a copy of all objections and/or representations. The traffic commissioner may allow additional information to be presented (but not extra grounds) or for additional documents or photographs to be produced at the inquiry. It is helpful if additional copies of documents

can be brought to the hearing since this will avoid having to take up a lot of time passing around the originals.

- 3.10 During the proceedings the traffic commissioner may ask the applicant what the effects may be on his/her business if he/she were to take action against the licence or in the case of applications impose conditions on the licence.
- 3.11 Finally the traffic commissioner will consider all the evidence which has been put before him/her.

It may be helpful to prepare some notes in advance, listing the relevant points you wish to raise at the inquiry bearing in mind the factors the traffic commissioner may take into account.

RECORDING OF THE INQUIRY

- 3.11 The proceedings will be recorded so that a transcript can be produced should one be required (normally transcripts are ordered only in cases where there is an appeal against the traffic commissioner's decision). Please note that during the inquiry personal information may be recorded and could be put into the public domain unless you ask for this information to be given in private. Any such request may be granted at the discretion of the traffic commissioner.

Please note that any information that you provide to the inquiry may be disclosed to third parties for enforcement purposes.

THE DECISION

- 3.12 The standard of proof in proceedings before a traffic commissioner is less than that required for a criminal court case where the test is 'beyond all reasonable doubt'. In a public inquiry a traffic commissioner only needs to be satisfied that the case has been proved on the 'balance of probability'. In other words "is it more likely than not" that e.g. a particular thing happened?
- 3.13 In most cases all interested parties will be informed of the outcome of the inquiry on the day and this will be confirmed in writing within a few days. In some cases the traffic commissioner might want to consider their decision further, in which case the written decision will be sent to you as soon as possible, usually within 28 days. All objectors/representors/complainants will receive written confirmation of the decision and a statement of the traffic commissioner's reasons, if so requested.

APPEALS

- 3.14 Applicants, operators and statutory objectors have a right of appeal to the Administrative Appeal Chamber (Transport) of the Upper Tribunal. Details of how to appeal will be set out in the decision letter, which will be sent out after the inquiry.
- 3.15 A traffic commissioner can only review his/her decision to grant or refuse an application if he/she is satisfied that there has been some procedural irregularity in dealing with it. A request to review the traffic commissioner's decision **must** be made as soon as possible and in any event within two months of the date of the traffic commissioner's original decision. Representors are directed to the Guide to making Representations, Objections and Complaints at www.dft.gov.uk/vosa/index.htm
- 3.16 The Upper Tribunal is an independent judicial body, which was set up to hear and determine appeals against decisions of the Traffic Commissioners. Its decisions are published at www.administrativeappeals.tribunals.gov.uk
- 3.17 All traffic commissioners seek to maintain the highest standards of personal and professional conduct. Any complaint that a traffic commissioner has in some way fallen short of these standards is taken seriously. A complaint regarding conduct is quite separate to any appeal to the Upper Tribunal that you may wish to pursue. The publication 'A Complaints Protocol and Bias Guidelines for Traffic Commissioners' provides further information and is available at; <http://www.dft.gov.uk/topics/tpm/traffic-commissioners/>

FREQUENTLY ASKED QUESTIONS

Who are traffic commissioners and what is their role?

Traffic commissioners are appointed by the Secretary of State for Transport. They work at 'arms length' from the Department for Transport (DfT) and its Agencies. It is the traffic commissioner who ultimately decides whether to call an applicant, operator, transport manager and/or driver(s) to a hearing. The public inquiry allows the traffic commissioner the opportunity to examine, in a formal setting, the applicant/operator and/or transport manager, and to hear evidence before reaching a decision on whether to grant or refuse an application or to take regulatory action against and existing licence. Traffic commissioners are specialist independent regulators who act in a judicial capacity when conducting a public inquiry. That means that they have to ensure that, like any other tribunal in Great Britain, the proceedings are fair and free from interference or bias.

More information is available in the booklet "Traffic Commissioners – What you need to know", which explains key facts about the Traffic

Commissioners and their role. That booklet is available via <http://www.dft.gov.uk/topics/tpm/traffic-commissioners>

How will the traffic commissioner consider finance?

The letter calling an operator to a public inquiry will advise whether the traffic commissioner is considering availability of finance against the level of resources which an operator or applicant is expected to demonstrate.

When considering this issue, the traffic commissioner will seek answers to three key questions, which were identified by the Transport Tribunal in appeal 1992/D41 J J Adam (Haulage) Ltd. These questions are:

- How much money can the operator find if the need arises?
- How quickly can they find it?
- Where will it come from?

The traffic commissioner will consider finance available if you have

- money in the bank which is capable of being used (i.e. it is not already needed for the payment of debts in the ordinary course of the business), or
- an overdraft at your disposal in the sense that there is a balance undrawn before the limit is reached, or
- you have debts which are obtainable because they are due and likely to be easy to collect or
- have assets from which money is easy to get in the sense that the assets are items which can be readily sold without any adverse effect on the ability of the business to generate money,
- or you have some other way in which to come up with money at fairly short notice.

It is important to note that a licence holder must be able to demonstrate that adequate finance is available continually during the life of a licence. It is not sufficient to demonstrate adequate finance on the day of the inquiry through short term solutions e.g. temporary loans that are to be repaid in the near future.

A list of the types of evidence which might be relied upon can be found at: www.dft.gov.uk/vosa/index.htm

What is meant by good repute or fitness to hold a licence?

All holders of a standard operator's licence, a restricted PSV licence and transport managers must be of good repute. All holders of a restricted goods licence must be fit to hold a licence.

When considering good repute and fitness the traffic commissioner may take into account the operator or applicant's conduct as well as any relevant convictions or any other information which appears to relate to the licence

holder's fitness to hold a licence and a transport manager's ability to act as a transport manager on a standard licence.

The relevant convictions are stated in legislation. Convictions for road transport offences and other serious offences may result in a mandatory loss of repute.

The letter calling you to the public inquiry will advise what evidence the traffic commissioner is considering and if you have any questions relating to this you should contact the Office of the Traffic Commissioner for advice.

www.dft.gov.uk/vosa/index.htm

How can I determine whether a transport manager is internal or external?

A transport manager must also have a genuine link to the operator. The application and other forms require a declaration to be made that an internal transport manager has that genuine link. For an 'Internal' transport manager that might be demonstrated if the transport manager is:

- the licence holder; or
- one of the partners whose name is on the licence; or
- is a director of the company in whose name the licence is held; or
- a full or part-time employee.

The traffic commissioner can check this at any time during the application process or during the life of the licence and as against previous declarations by requesting proof of employment, such as a contract. Employment might be demonstrated in a number of ways, starting with tax and employee contributions. In general an employee (internal) is normally part of the employer's organisation and does their work as an integral part of the business whereas an independent contractor (external) is not usually integrated into the organisation but is accessory to it

What is professional competence?

Professional Competence is demonstrated by producing of a certificate (CPC) which meets EU requirements. Anyone with existing third-party qualifications will continue to be exempt from the CPC examination requirement. There will be no new National CPCs but existing certificates will remain valid for 'national' operations. Copies of certificates are not acceptable.

The Secretary of State has issued 'Acquired Rights' certificates to certain transport managers who previously held 'Grandfather Rights'. The holders of Grandfather Rights who were listed on an operators licence as at 2011 were provided with Acquired Rights certificates. The certificate is issued on the basis of a declaration that the individuals in question can provide proof upon request that they have 'continuously managed' a road haulage or a road passenger transport operation in one or more Member States for the period of 10 years ending 4 December 2009. A false declaration in order to obtain an

Acquired Rights certificate will have a potentially serious impact on the reputation of that transport manager.

The holder of a certificate of professional competence is deemed to possess knowledge corresponding to the level set out in EU legislation unless found otherwise by a traffic commissioner. It is not possible to list all of the duties which a transport manager might be expected to undertake, although the Statutory Guidance and Statutory Directions may assist www.dft.gov.uk/vosa/index.htm. Various functions might be carried out by different teams or divisions within a business but the transport manager retains ultimate responsibility for discharging the statutory duty. If a traffic commissioner finds otherwise then the traffic commissioner can order that transport manager to undertake rehabilitative measures which include the re-sitting of the qualification examination to obtain a Certificate of Professional Competence.

What is an 'environmental' public inquiry?

This is short hand for a public inquiry to determine the suitability of an operating centre for a goods vehicle operator's licence. It is just one of a number of matters which the traffic commissioner has to consider when deciding on the application. Owners and occupiers of property near the proposed operating centre who believe that their use or enjoyment of their own property would be prejudicially affected can make representations on environmental grounds only. Those representations have to comply with a number of conditions required by law that ensure the proceedings are fair before they can be treated as valid.

The traffic commissioner can take into account:

- the nature or use of any other land in the vicinity of the operating centre and the effect which the issue of the licence would be likely to have on the environment;
- if the site has been used as an operating centre before, the extent to which the grant of the application would result in a change which would adversely affect the environment of its vicinity;
- if it has not been used as an operating centre before, any information known to him/her about planning permission relating to the operating centre or other land in the vicinity of the operating centre;
- the number, type and size of authorised motor vehicles and trailers;
- the arrangements, or proposed arrangements, for the parking of motor vehicles or trailers;
- the nature and the times of use of the land as an operating centre;
- the nature and times of use of equipment installed (or proposed to be installed) at the operating centre in connection with its use as an operating centre;
- the means by which, and frequency of, vehicles authorised by the licence entering and leaving the operating centre.

Generally speaking the traffic commissioner may consider the effects of: **Noise** – from the applicant's vehicles moving in and out of, and while at, the

operating centre; **Visual Intrusion** – the effect the parking of vehicles at the operating centre may have on the outlook from a representor's property or land; **Vibration** – the effect vehicle movements may have, either at the operating centre or on their way in or out of the operating centre; **Fumes/Pollution** – the effect of fumes from the applicant's vehicles on the use or enjoyment of property.

The traffic commissioner can grant or refuse the application in full or in part and can impose environmental and/or road safety conditions, but there are limits to his/her jurisdiction. The traffic commissioner can only impose conditions on the use of an operating centre in respect of the applicant and cannot place restrictions on any vehicles which are visiting the site or are using it for other purposes. The public inquiry is quite separate from any that the highway, planning or local authorities might conduct. The use of the premises for other purposes is the responsibility of the local planning authority. Concerns regarding the public highway leading to the operating centre or the surrounding road network are matters for highway authorities.

What happens if I do not meet the statutory requirements?

A public inquiry is not a criminal court and so the traffic commissioner will be concerned with the position of the operator at the date of the public inquiry. One way of showing that you meet the conditions/undertakings on an existing licence is to bring the records requested in the letter calling you to public inquiry to the hearing. Simply put if the traffic commissioner finds that the requirements are not met then he/she may refuse an application and/or take action against the licence or your repute/professional competence as a transport manager.

However the legislation does allow the holder of a standard licence (but not applicants) to ask the traffic commissioner for a period of time ('period of grace') to rectify the situation. The traffic commissioner is **not** obliged to grant a period of grace. The **maximum** periods allowed under the legislation are as follows:

Shortcoming		Maximum Period of Grace
Transport Manager	Departure from employment	6 months
	Death or physical incapacity	6 + 3 months
Effective & Stable Establishment		6 months
Financial Standing		6 months to demonstrate that the requirement will be met <i>on a permanent basis</i>

Where can I find additional information?

The Senior Traffic Commissioner has published a suite of Statutory Guidance and Statutory Directions which outline the practices in various legal areas.

Amongst other things, they cover Fitness & Good Repute; Finance; Transport Managers; Operating Centres & Stable Establishments; Case Management; Principles of Decision Making. You can download a copy of these documents at;

www.dft.gov.uk/pgr/roads/tpm/trafficcommissioners/publicationscheme/publications

Relevant Legislation

The most commonly referred to legislation is listed below. Much of this legislation has been subject to amendment.

Goods vehicle operator licensing

The Goods Vehicles (Licensing of Operators) Act 1995

The Goods Vehicles (Licensing of Operators) Regulations 1995 (SI 1995/2869)

The Road Transport Operator Regulations 2011 (SI 2011/???)

Regulation (EC) No 1071/2009 (Access to the occupation of road transport operator)

Regulation (EC) No 1072/2009 (Common rules for access to the international road haulage market)

The Goods Vehicle (Community Authorisations) Regulations 2011

The Goods Vehicles (Enforcement Powers) Regulations 2001

Public service vehicle operator licensing

The Public Passenger Vehicles Act 1981

The Public Service Vehicles (Operator's Licences) Regulations 1995

The Public Service Vehicles (Traffic Commissioners: Publication and Inquiries) Regulations 1986

The Transport Act 1985

The Transport Act 2000

The Local Transport Act 2008

The Public Service Vehicle (Enforcement Powers) Regulations 2009

The Public Service Vehicle (Registration of Local Services) (Scotland)

Regulations 2001

The Public Service Vehicles (Registration of Local Services) Regulations 1986

You may wish to obtain a copy of the Act or Regulations referred to in the letter calling you to the public inquiry from The Stationery Office Limited (Tel: 0870 600 5522). Alternatively, electronic versions of the Act and Regulations can be viewed at www.legislation.gov.uk.