



Department for  
**Infrastructure**

An Roinn  
**Bonneagair**

[www.infrastructure-ni.gov.uk](http://www.infrastructure-ni.gov.uk)

## ***Practice Guidance Document No.0***

### **INTRODUCTION**

***(INCLUDING HOW TO USE THE PRACTICE  
GUIDANCE AND INSTRUCTIONS)***

**Commencement** **01/10/2019**

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## Goods Vehicle Operator Licensing

### Introduction

- a) The documents containing the Department for Infrastructure (“the Department”) Guidance and Instruction (“Practice Guidance”) were first issued in October 2019.
- b) The Practice Guidance is developed from the Statutory Guidance and Statutory Directions published by the GB Senior Traffic Commissioner and this Department is grateful for the advice and assistance provided by the Office of the Traffic Commissioner during the drafting and publication of these documents.
- c) The construction of the Practice Guidance reflects the different powers of the Department and how they impact Goods Vehicle applicants and operators. These documents are designed to provide guidance and advice to those applicants and operators who are regulated by the Department through the statutory functions undertaken by its Transport Regulation Unit (TRU).
- d) The Practice Guidance is intended to provide greater transparency to the way the Department approaches its statutory duties and the licensing and other work conducted outside the tribunal room. They also set the framework for instructions to members of staff acting in support of the Department.
- e) The Practice Guidance documents are clearly defined. They are published as an available resource for all applicants, operators, transport managers, staff, and other interested parties. The other Practice Guidance documents are as follows:
  1. Good Repute and Fitness
  2. Finance
  3. Transport Managers
  4. Operating Centres, Stable Establishments and Addresses for Service
  5. Legal Entities
  6. Detentions
  7. Delegation of Authority
  8. Case management
  9. Principles of Decision Making & the Concept of Proportionality
  10. Format of Decisions
  11. Appeals

# GUIDANCE

1. The Department for Infrastructure issues the following Practice Guidance to provide information as to the way in which the Transport Regulation Unit should interpret the law relation to the application of Goods Vehicle legislation – The Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010. This guidance may be subject to decisions of the higher courts and subsequent legislation.
2. The Practice Guidance is intended to provide a consistent basis for decision making and have developed with regard to the [Code of Practice on Guidance on Regulations](#) introduced by the Northern Ireland Executive and NI Assembly in July 2010. The code is a non-statutory code of practice, not legally binding and cannot prevail over statutory or mandatory external requirements.

### Relevant Powers of the Department

3. The competent authority is the Department for Infrastructure, and its statutory functions are undertaken by the Transport Regulation Unit and those bodies / individuals who have been entrusted to undertaken duties under delegated authority<sup>1</sup>.
4. As the Upper Tribunal (and its predecessor, the Transport Tribunal) has made clear, in considering regulatory action the competent authority needs to reflect on what is required as a deterrent, not only to the individual party but to others within the industry<sup>2</sup>. Each case must be determined on its own merits and consistency of approach should not be mistaken for uniformity of decisions<sup>3</sup>. Inevitably the legal concept of proportionality (which requires the Transport Regulation Unit to weigh the facts as they find them from the evidence before them and to determine what is the appropriate direction to make based on the objects of the legislation) means that each case will involve a collection of different and variable factors.
5. This is not always well understood, even within regulated industries, and its effect is that the Practice Guidance provides starting points for anticipated action by the Department.

### Use of Case Law

6. Any interpretation of the law can only be current as at the date of publication. In the absence of definitions within the legislation the Practice Guidance relies on case law to assist the Transport Regulation Unit and those acting under authorised delegation. The nature of appeals from the decisions of the department, and traffic commissioners (as the competent authority within GB), means that points of law are not always fully argued before the Upper Tribunal. Where a case is fully argued, for instance where the competent authority has been fully represented, that case provides a potentially binding precedent.
7. In other cases the authority has sought to identify and apply principles, or an approach to an issue, based on the findings of the Upper Tribunal.

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<sup>1</sup> See also Practice Guidance and Instructions on Delegation of Authority

<sup>2</sup> 2013/047 Dundee Plant Co. Ltd and 2014/024 LA & Z Leonida t/s ETS

<sup>3</sup> 2003/237 The Fox (A1) Ltd

## Goods Vehicle Operator Licensing

8. Inevitably the footnotes cannot provide an exhaustive list of the relevant provisions and case law, for which it may be best to refer to the digest of the Administrative Appeals Chamber of the Upper Tribunal<sup>4</sup>. Where it may be necessary to refer to another document this is also indicated.
9. For ease of reference, where decisions or comments are quoted relating to either the Upper Tribunal or its predecessor the Transport Tribunal, these Practice Guidance documents refer only to the new title – the Upper Tribunal.
10. In referring to the decisions of the Upper Tribunal the citations relied upon throughout the Practice Guidance are those which accord with the search facility provided in the HM Courts and Tribunal Service web site so as to ensure accessibility.

Post January 2016 decisions:

[https://www.gov.uk/administrative-appeals-tribunal-decisions?tribunal\\_decision\\_categories%5B%5D=transport-traffic-commissioner-and-doe-ni-appeals](https://www.gov.uk/administrative-appeals-tribunal-decisions?tribunal_decision_categories%5B%5D=transport-traffic-commissioner-and-doe-ni-appeals)

Pre January 2016 decisions:

<http://transportappeals.decisions.tribunals.gov.uk/Aspx/Default.aspx>

11. The Practice Guidance should assist the Department and its decision makers in identifying useful case law, and should give confidence to staff members to make prompt decisions, particularly when acting under delegations.

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<sup>4</sup>[http://administrativeappeals.decisions.tribunals.gov.uk/Documents/Digest%20of%20Traffic%20Commissioner%20Appeals%20\(2018\).pdf](http://administrativeappeals.decisions.tribunals.gov.uk/Documents/Digest%20of%20Traffic%20Commissioner%20Appeals%20(2018).pdf)

# INSTRUCTIONS

12. The Department issues the following instructions for use by staff and other interested individuals. They should not be construed as legal guidance or interpretations of the law as this rests with the Courts. These instructions are issued in respect of the approach to be taken by staff acting on behalf of the Department for Infrastructure and dictate the operation of delegated functions.

## Basis of Instructions

13. These instructions are issued to provide practical advice on the administrative arrangements to those who support the Department in fulfilling its statutory functions. It is acknowledged that the guidance and instruction cannot anticipate any legal changes and may therefore be subject to decisions of the higher courts and to subsequent legislation.
14. Members of staff are obliged to follow the Practice Guidance instructions unless specifically directed to do otherwise by the Head of Transport Regulation Unit. Where legal grounds are found not to follow Practice Guidance detailed reasons must be recorded for departing from the published Practice Guidance.
15. The Upper Tribunal has two guiding principles: a party is entitled as a matter of law to know why an adverse decision has been reached, and the decision-maker is obliged to demonstrate that they have conducted the appropriate balancing exercise and reached a decision based only on relevant matters. The Upper Tribunal expects an adequate and intelligible statement of reasons, whether delivered in writing or in person (ex tempore).
16. It is accepted that the interactive nature of a public inquiry may require the Department to engage with an operator or applicant to test the evidence and to encourage adherence to high standards and the regulatory regime. Different considerations might apply to a decision on the papers but any decision must communicate sufficient reasons to satisfy the law and any appellate body. There is no need to set out every trivial factor or combination that has no influence on the decision. There are generally three main elements to the balancing exercise. First, the relevant factors should be identified; second, each relevant factor should be addressed; and third, the analysis must indicate the weight or significance that has been attached to the relevant factors with reasons<sup>5</sup>. Submissions need to be accurate and any decision must be adequately explained by staff acting on the Department's behalf<sup>6</sup>.

## Transport Regulation Unit

01 May 2020

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<sup>5</sup> 2007/459 KDL European, 2002/1 Bryan Haulage Ltd (No1), Smiths Coaches, 2000/57 Yorkshire Rider Ltd & 2002/62 First Bristol Buses, 2008/130 Lorna Eddie, 2004/439 Surry CC v Ripley, 2005/466 Nijar Dairies, 2006/147 Castleton Turf 2009/008 Severn Valley Transport

<sup>6</sup> 2016/018 Eric Leslie Brown

## DOCUMENT CONTROL HISTORY

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