



Department for
Infrastructure

An Roinn
Bonneagair

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FORMAT OF DECISIONS

INCLUDING PUBLICATION, WRITTEN REASONS AND DECISIONS

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GUIDANCE

1. This guidance is issued to assist the Department's Transport Regulation Unit staff in the exercise of the Department's statutory functions and in particular in relation to the timing of written decisions.
2. Where findings from the Upper Tribunal relate to traffic commissioners in GB, those findings and subsequent recommendations will be applied within Northern Ireland by the Head of Transport Regulation Unit ("Head of TRU"), or the presiding officer of an inquiry, on behalf of the Department for Infrastructure ("the Department").

Basis of Guidance

3. The Department recognises the importance of demonstrating its impartiality and fairness in reaching its decisions¹ under the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010. This guidance deals with the administration and practicalities for making decisions available to interested parties². The principles to be employed when reaching decisions are set out elsewhere³. The provisions for a review of decisions are also set out elsewhere⁴.
4. A predominant function of the Department is to act similar to a tribunal, dealing with hearings, interlocutory decisions, and matters ancillary to the regulatory process. As such, in common with tribunals, there is an obligation to issue decisions promptly⁵.
5. The majority of decisions made by the Department, following a public inquiry, are delivered orally on the day of the hearing. The Department may, however, decide that the interests of justice a decision should be explained in writing. The timescales suggested below are subject to the availability of resources and other exceptional circumstances which might affect the availability of the decision maker or dictate other priorities. Those timescales exclude detention cases where the legislation provides a specific timetable. Where there is a hearing the decision should be communicated within 14 days of its conclusion and where there is no hearing, the decision should be communicated within 21 days of receiving the application⁶. Those timescales are subject to extension where the decision maker considers it necessary in the interests of justice and fairness in the particular case⁷.

Case Law

6. This Guidance is subject to any decisions of the higher courts and to subsequent legislation; however, the following principles have been extracted from existing case law.

¹ Human Rights Act 1998, see Practice Guidance and Instructions on Case Management

² Third parties can request copies of decisions via the Department's Transport Regulation Unit

³ See Practice Guidance and Instructions on the Principles of Decision Making

⁴ See Practice Guidance and Instructions on Appeals

⁵ Section 6 Human Rights Act 1998, *Al-Le Logistics Limited* [2010] EWHC 134 (Admin), and the Transport Tribunal decision in *AM Richardson* (2000/65).

⁶ Regulation 10 of the Goods Vehicle (Enforcement Powers) Regulations (Northern Ireland) 2012.

⁷ Regulation 21 of the Goods Vehicle (Enforcement Powers) Regulations (Northern Ireland) 2012.

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7. As the Court of Appeal has acknowledged, rights of appeal are afforded because no judge is infallible. It is not possible to provide a set template that covers every type of decision and it may be perfectly acceptable for reasons to be set out briefly but there should be a clear explanation of any order⁸. *“The interactive nature of a public inquiry, and the traffic commissioner’s duty to engage with an operator in order to test the evidence and to encourage adherence to high standards and the regulatory regime, may mean that some cases can best be dealt with either informally or robustly, depending upon the circumstances. Many operators leave the public inquiry room chastened and resolving never to return, having been given the clearest of reasons for the traffic commissioner’s concerns...”*⁹.
8. The Upper Tribunal subsequently acknowledges that the Department, as the competent authority, is well able to exercise judgement and adapt its approach according to the gravity of the case. It is for the Department to decide whether to give a written decision. Whether or not a decision is oral or in writing, it must be properly structured and provide sufficient intelligible reasons for the conclusion reached. An applicant for a licence, whose application has been refused, is entitled to know which of the statutory criteria have not been met and why. The operator should have it explained to them why an adverse decision has been reached and the Department should show that an appropriate balancing exercise has been carried out¹⁰. The more serious the likely outcome, the greater the requirement for a demonstrably structured and obviously judicious approach. It may be necessary to include additional matters to those suggested in Annex 1. Where the Department relies on the cumulative effect of a number of factors, it may be necessary to show how one factor adds to another¹¹.
9. The Department accepts the Upper Tribunal’s direction that what matters most is ‘what the presiding officer thinks and why they think it’ and that *“they should not feel constrained to include standard paragraphs and phrases in their decisions”*¹². Numerous appeal decisions repeat the need for sufficient written reasons in the record of the traffic commissioner or Department decisions¹³. Where a finding is made it is important for the Department to explain what conclusions have been reached having had the opportunity to assess all the evidence in the round¹⁴. In constructing a decision, *“we do not think that there is any obligation on a judicial decision-maker, in every case, to prove that they know all the applicable cases or to prove that they correctly understand the law. Setting out the legal framework where it is not in dispute, and citing key cases where no specific point turns on them, is not obligatory, although it is not damaging either. What matters is that the [presiding officer] has set out what he or she thinks, and why he or she thinks it, and the description and structure of the approach accords with the applicable legal framework”*¹⁵.

⁸ English v Emery Reinbold & Strick Ltd and others [2002] EWCA Civ 605

⁹ 2014/080 Graham William Smith t/a Smiths Coaches

¹⁰ 2014/009 Hunterstrong Engineering Ltd

¹¹ 2012/068 Peter Nicholas Wenzal Priedel t/a Sandwich Statics

¹² 2010/071 Eurofast (Europe) Ltd and others

¹³ 2008/413 Al-Le Logistics

¹⁴ 2012/036 Patrick O’Keefe t/a O’Keefe Building

¹⁵ 2013/046 Shearer Transport Ltd & Another

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10. A written decision or reasons can be used to subsequently correct a decision¹⁶. The power to correct a written decision is more limited, but certainly extends to typographical and factual errors such as a numerical correction but requires an explanation. It can happen that a feature of the evidence which had not received much attention at the hearing strikes the decision maker, who has reserved the decision, as being important. It is entirely a matter of discretion and fairness whether the tribunal can rely on that feature without hearing further evidence or argument, and it is difficult to suggest any general rule on the topic¹⁷.
11. Long delays between the hearing of evidence at a public inquiry and the publication of a written decision should generally be avoided¹⁸ and the Department should make efforts to minimise the risk of this happening. The decisions themselves are directed to operators who will be well aware of the issues involved and the arguments advanced¹⁹. Each case will turn on its own facts, with “*the degree of particularity required depending on the nature of the issues falling for decision*”. The decisions themselves are directed to operators who will be well aware of the issues involved and the arguments advanced²⁰. It may also include giving an oral decision with an indication to provide written reasons for that decision in due course²¹. Each case will turn on its own facts, with “*the degree of particularity required depending on the nature of the issues falling for decision*”.
12. The reasoning relied upon should be set out in any full written decision. The presiding officer has to consider the evidence carefully and then give reasons if they are going to reject it. It is not enough to refer to evidence and then move straight to a conclusion²². In many cases there will be no need to explain the relevance of a particular factor in the decision because it will only need to be stated for its relevance to be apparent. However, where there is any doubt as to whether or not a factor is relevant, the presiding officer should explain why it considers it to be relevant²³. The presiding officer should make an assessment of the nature, number and gravity of any breaches and the steps taken by the operator to prevent breaches, which should be set out in the decision as well as the weight given, for instance, to the operator’s general record, performance, reputation and enforcement history²⁴. It must be possible to determine from the decision which matters were taken into account the weight placed upon those matters and whether the appropriate balancing exercise was carried out.
13. The presiding officer needs to ensure sufficient detail to allow a person with experience of the relevant industry to understand the basis upon which the decision was arrived at. Even in a ‘bad case’ where the operator could not have failed to understand why the presiding officer came to the particular conclusion the absence of a written decision has been criticised²⁵. It is not necessarily the case that whenever an operator’s licence is to be revoked a written decision is

¹⁶ 2001/077 Wilton Contract

¹⁷ 1999/L56 Alison Jones t/a Jones Motors, Shamrock Coaches, and Thomas Motor Services

¹⁸ 2005/523 Swallow Coach Company

¹⁹ South Bucks District Council & Another v. Porter (No.2) [2004] UKHL 33, (2004 1WLR 1953

²⁰ South Bucks District Council & Another v. Porter (No.2) [2004] UKHL 33, (2004 1WLR 1953

²¹ Stay decision in Sally Lyn Thompson

²² 2000/057 Yorkshire Rider Ltd

²³ 2007/104 S Lloyd

²⁴ 2002/1 Bryan Haulage Ltd (No1)

²⁵ 2009/08 William Ball T/a Severn Valley Transport Appeal

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required or should accompany or follow any oral decision²⁶. The Upper Tribunal has made the following observations: *“The deputy traffic commissioner (DTC) announced his decision at the end of the inquiry and, at the same time, gave extempore reasons for his decision. Giving adequate extempore reasons is a difficult task calling for no little skill. In our view, the DTC was more than equal to the task. We were impressed by the quality of the DTC’s extempore reasons. The reasons included an explanation as to why the DTC accepted Mr P... evidence and why”*²⁷.

14. However, it would be normal to provide a written decision where revocation (or other strong regulatory action) follows a lengthy public inquiry²⁸. Reasons should be given for any conclusion. The intentions of the presiding officer and the effect on the party(s) should be equally clear²⁹. Any relevant matters such as the burden of proof should be accurately described but may not be fatal to the validity of a decision³⁰. In more complicated cases this may only be possible by putting that reasoning in writing.
15. The general rule is that a final decision of the presiding officer cannot be re-opened except by way of lawful appeal, but the rule applies only after the written decision has been drawn up and issued. It is also subject to two exceptions: where there has been a slip in drawing up the decision (and many jurisdictions have a ‘slip rule’ to allow for rectification) and where, for some other reason, it is established that the document does not properly and accurately convey what the presiding officer clearly and manifestly intended or indicated that it should say³¹.
16. The Department accepts that where a judgment is reported in the Official Law Reports (e.g. A.C., Q.B., CH., Fam.) then that report should be cited as they contain a summary of the argument. If unavailable then another report or transcript might be relied upon. In the main the Department will rely on the decisions of the Upper Tribunal. The Upper Tribunal citations relied upon throughout the Practice Guidance and Instructions are those that accord with the search facility provided on the HM Courts and Tribunal Service web site, so as to ensure accessibility of these decisions. The Tribunal Procedure (Upper Tribunal) Rules 2008 have been amended to allow appeals against the decisions of the Department, the Competent Authority for Northern Ireland.

Oral decisions

17. In the majority of cases it is desirable to issue decisions orally at the public inquiry, together with accompanying reasons and reference to the individual sections of the legislation that the presiding officer has found are made out. Whilst the presiding officer should avoid the perception that a decision has been reached in haste or of pre-determination³², it is envisaged that this practice will continue in

²⁶ 2010/13 Malcolm Thomas Berry, 2010/036 Suzanne Stoneman t/a Keith Travel

²⁷ 2017/025 K Kapacee t/a Zara Travel

²⁸ 2010/067 Pemberton Transport

²⁹ 2008/780 South Lincs Plant Hire & Sales

³⁰ Post January 2016 decisions: www.gov.uk/administrative-appeals-tribunal-decisions?tribunal_decision_categories%5B%5D=transport-trafficcommissioner-and-doe-ni-appeals

³¹ 2011/043 DA Lewis UPV Installations Ltd & Another

³² 2010/067 Pemberton Transport Ltd

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the majority of straightforward cases. The actual decision will always be confirmed in writing, which will also explain the right of appeal.

Written confirmation of an oral decision

18. In certain cases, however, following the issue of an oral decision, the Department may indicate that it will issue a written copy of the decision and accompanying reasons to ensure that all parties and any interested parties understand the reasons for a decision and its implications. This written record may also be of great benefit to others who deal with the operator (or a linked operator) at a subsequent public inquiry.
19. The Department will aim to issue those written reasons within ten days of the public inquiry. As a courtesy, any party awaiting a written decision should be kept informed on any actual or anticipated delays.

Full written reasons

20. The Department recognises that there will be certain cases in which a written decision, that records relevant evidence, considerations and findings, will be necessary following a public inquiry.
21. The principles for dealing with cases justly and expeditiously are set out in the Practice Guidance and Directions on Case Management. The following examples offer guidance as to when a written decision would be more likely to be required:
 - revocation with disqualification and/or disqualification of a transport manager, where those reasons may be required at the time when the operator/individual attempts to re-enter the industry³³
 - where there has been a significant factual argument during the course of the hearing requiring detailed explanation as to the weight attached to the evidence, for instance regarding the credibility of a witness
 - where a complex area of law or novel legal argument needs to be determined, which may ultimately be considered at appeal
 - where it is necessary for the understanding of an unrepresented party to the proceedings, representors or statutory objectors
 - where an important learning point of general application needs to be communicated more widely

³³ 2010/029 David Finch Haulage

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22. These timescales are dependent on available resources. However, the Department will seek to ensure that arrangements are made for the delayed decision to be published as soon as is reasonably practicable. This may include, for example, reprioritising the workload to allow sufficient time to be devoted to the issue of the full written reasons.
23. In cases where a decision is reserved, the Department should endeavour to publish its written reasons no later than 28 days from the date of the final hearing, except in cases where a full transcript or part transcript is required. In the latter case, the target date for publication is 28 days after the transcript becomes available. The Department recognises it might be necessary to put conditions in writing to a party after the hearing and to seek comments and/or agreement or to seek further information. In those circumstances the timetable starts with receipt of the response or further information.

Format of written decisions

24. In respect of standard licences, Regulation (EC) 1071/2009 requires the name of any person declared to be unfit to manage the transport activities of an undertaking (as long as the good repute of that person has not been re-established etc.) and any applicable rehabilitation measures, to be recorded on the National Electronic Register. Regulation (EC) 1213/2010 requires Member States since 31st December 2012 to ensure that there is inter-connectivity between the various National Registers. The Register will therefore record where such action is taken by the Department but due to the limitations on the National Electronic Register the entry will simply refer to the published full written reasons.
25. A template has been designed to provide a general approach to the format of written decisions and should be used as a starting point for the format of all relevant decisions. That template is attached at Annex 1.

Redaction of all or part of published decisions

26. Generally, the Department will issue the whole of its decision, which will consequently be in the public domain. However, this will be subject to the provisions that apply with regard to the Department having a power to hear the whole or part of any inquiry in private.
27. Paragraph 2 of Schedule 3 of the Goods Vehicles (Licensing of Operators) Regulations (Northern Ireland) 2012 provides the following:
 - (2) *The Department may direct that the whole or any part of an inquiry be held in private if it is satisfied that by reason of –*
 - (a) *the likelihood of disclosure of intimate personal or financial circumstances;*
 - (b) *the likelihood of disclosure of commercially sensitive information or information obtained in confidence; or*

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- (c) *exceptional circumstances not falling within sub-paragraphs (a) or (b),*

it is just and reasonable for it to do so.

- (3) *Where the hearing is in private the Department may admit such persons as it considers appropriate.*
- (4) *Without prejudice to sub-paragraph (2), where any question relating to the appropriate financial resources of any persons is to be or is being considered during an inquiry, the Department may exclude such persons as it thinks fit from the part of the inquiry during which that question is considered.*

- 28.** It therefore follows that where the presiding officer has heard all or part of the evidence given at the public inquiry in private, that they must give careful consideration as to whether it is appropriate to redact all or part of the decision. In general terms they will be likely to redact those parts of the decision that refer to evidence given in private and consequently that should not go into the public domain.
- 29.** Furthermore, the legislation requires the Department to process personal data (within the meaning of the General Data Protection Regulation (EU) 2016/679 (GDPR) and Data Protection Act 2018 (DPA)). The processing³⁴ of personal data³⁵ by individual members of staff, and those with delegated authority, must comply with GDPR and DPA which also detail the six Data Protection Principles³⁶. The categories of personal data that are processed might include “special category data” or information such as names, addresses, telephone numbers, employment activities, convictions, financial details, mental capacity and any other information that may be submitted by applicants, licence holders or candidates, or considered by the Department in order to fulfil its statutory duties. Personal data processed for the purposes of regulation is not subject to subject information limiting disclosure³⁷. The non-disclosure provisions do not apply where disclosure is required by law or in connection with legal proceedings³⁸. In reaching a decision, the Department should only refer to what is required for its lawful purposes.
- 30.** The Department will be concerned to ensure that arrangements are in place so that relevant personal data is accurate and processed properly. It has therefore adopted a general approach that sensitive information that is personal financial information shall be given with only the operator and nominated representative(s) present. There may be occasions, however, where it is necessary to hear some

³⁴ “Processing” is defined, under Article 4 of the GDPR, as “any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction”

³⁵ Personal data” is defined under the GDPR as “any information relating to an identified or identifiable natural person ...; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier ... or to one or more factors specific to the ... identity of that natural person”.

³⁶ Article 5 of the GDPR and Chapter 2 of the DPA

³⁷ Article 23 of the GDPR

³⁸ Article 23 of the GDPR and Schedule 2 of the DPA

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related evidence in public and to refer to a document such as a bank statement where, for instance, it is alleged to have been altered.

31. The presiding officer will give careful consideration as to whether it is necessary to redact those parts of the decision that relate to evidence given in private in accordance with Schedule 3 paragraph 2(2) of the Goods Vehicles (Licensing of Operators) Regulations (Northern Ireland) 2012.
32. In completing a decision with full written reasons it should not be necessary to complete a second version of the decision. The presiding officer should ensure that any sensitive sections which they require to be removed from the publicly available version of the decision should be placed in bold text written between square brackets. Whilst the full decision will of course be made available to the subject(s) of the public inquiry or hearing or anyone requesting a copy, the Department will take all reasonable steps to ensure that only the redacted decision is placed into the public domain. The attached template provides suggested wording to adopt.

Transport Regulation Unit

01 May 2020

ANNEX 1 - WRITTEN DECISION TEMPLATE

The following is not mandatory as the format of any decision may depend largely on the issues under consideration. It is offered as a prompt to remind the presiding officer of the broad headings they might wish to include in written decisions and the preferred approach to the redaction of written decisions, as referred to at paragraph 27.



DECISION OF THE DEPARTMENT FOR INFRASTRUCTURE

NAME OF OPERATOR

AND ANY OTHER PARTY

LICENCE NUMBER

Decision

To be used if the decision contains confidential information:

THIS DECISION CONTAINS CONFIDENTIAL INFORMATION. THE RELEVANT SECTIONS INDICATED IN BOLD AND BETWEEN SQUARE BRACKETS ARE NOT TO BE PUBLISHED WITHOUT THE PERMISSION OF THE DEPARTMENT FOR INFRASTRUCTURE

Background

Type of licence, level of authority, type of entity, previous history and where appropriate transport manager details

The Call to the Public Inquiry

Reference to the Call up letter (citing the relevant legislation)

The Public Inquiry

Where, when, who attended.

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The Evidence

Refer to those matters considered particularly any documents not included in the brief.

Refer to the salient points of the oral evidence of each of the witnesses, e.g. DVA, the operator and any other witnesses,

Findings of fact

Where necessary describe the weight attached or why a particular version may be preferred.

Findings regarding breaches of the legislation

Relevant considerations

Including a description of the balancing exercise and the factors taken into account.

Include reference to the consideration of the factors taken into account regarding the effect of any regulatory action taken (e.g. the effects of an order for suspension or curtailment) and the reasons for the imposition of that regulatory action

Decision

To include all directions made with regard to the operator and, where appropriate, the transport manager and individual directors or partners.

(Name)

Department for Infrastructure

(Date)

ANNEX 2: EU LEGISLATION

Regulation 3 of the Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012 states that a standard licence constitutes an authorisation to pursue the occupation of road transport operator for the purposes of:

Regulation (EC) 1071/2009 establishing common rules concerning conditions to be complied with to pursue the occupation of road transport operator repealed Council Directive 96/26 EC and applicable from 4th December 2011

Article 15 - Decisions of the competent authorities and appeals

1. Negative decisions taken by the competent authorities of the Member States pursuant to this Regulation, including the rejection of an application, the suspension or withdrawal of an existing authorisation and a declaration of unfitness of a transport manager, shall state the reasons on which they are based.

Such decisions shall take account of available information concerning infringements committed by the undertaking or the transport manager which are such as to detract from the good repute of the undertaking and of any other information at the disposal of the competent authority. They shall specify the rehabilitation measures applicable in the event of the suspension of an authorisation or a declaration of unfitness.

Article 16 - National electronic registers

1. For the purposes of the implementation of this Regulation, and in particular Articles 11 to 14 and Article 26 thereof, each Member State shall keep a national electronic register of road transport undertakings which have been authorised by a competent authority designated by it to engage in the occupation of road transport operator. The data contained in that register shall be processed under the supervision of a public authority designated for that purpose. The relevant data contained in the national electronic register shall be accessible to all the competent authorities of the Member State in question.

2. National electronic registers shall contain at least the following data:

- (a) the name and legal form of the undertaking;
- (b) the address of its establishment;
- (c) the names of the transport managers designated to meet the conditions as to good repute and professional competence or, as appropriate, the name of a legal representative;
- (d) the type of authorisation, the number of vehicles it covers and, where appropriate, the serial number of the Community licence and of the certified copies;
- (e) the number, category and type of serious infringements, as referred to in Article 6(1)(b), which have resulted in a conviction or penalty during the last 2 years;
- (f) the name of any person declared to be unfit to manage the transport activities of an undertaking, as long as the good repute of that person has not been re-established pursuant to Article 6(3), and the rehabilitation measures applicable.

For the purposes of point (e), Member States may, until 31 December 2015, choose to include in the national electronic register only the most serious infringements set out in Annex IV.

Member States may choose to keep the data referred to in points (e) and (f) of the first subparagraph in separate registers. In such a case, the relevant data shall be available upon request or directly accessible to all the competent authorities of the Member State in question. The requested information shall be provided within 30 working days of receipt of the request. The data referred to in points (a) to (d) of the first subparagraph shall be publicly accessible, in accordance with the relevant provisions on personal data protection.

In any case, the data referred to in points (e) and (f) of the first subparagraph shall only be accessible to authorities other than the competent authorities where they are duly endowed with powers relating to supervision and the imposition of penalties in the road transport sector and their officials are sworn to, or otherwise are under a formal obligation of, secrecy.

3. Data concerning an undertaking whose authorisation has been suspended or withdrawn shall remain in the national electronic register for two years from the expiry of the suspension or the withdrawal of the licence, and shall thereafter be immediately removed.

Data concerning any person declared to be unfit for the occupation of road transport operator shall remain in the national electronic register as long as the good repute of that person has not been re-established pursuant to Article 6(3). Where such a rehabilitation measure or any other measure having an equivalent effect is taken, the data shall be immediately removed.

The data referred to in the first and second subparagraphs shall specify the reasons for the suspension or withdrawal of the authorisation or the declaration of unfitness, as appropriate, and the corresponding duration.

DOCUMENT CONTROL HISTORY

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Adjustments limited to correction of typographical errors.	