



Department for

Infrastructure

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A Guide to Public Inquiries Goods Vehicle Operator Licensing

This guide contains important information that you must read

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Public Inquiries

1 WHAT IS A PUBLIC INQUIRY?

- 1.1 A public inquiry is a formal hearing held by the Department for Infrastructure (DfI) under the powers of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010.
- 1.2 Public Inquiries are presided over by an official of the DfI, normally from the Department's Transport Regulation Unit (TRU).
- 1.3 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.
- 1.4 At public inquiries to determine an application the presiding officer will consider evidence from the applicant and, if required, any valid opposition to the application. When reviewing an operating centre the presiding officer will consider evidence from the operator and any valid complainants. In regulatory cases the presiding officer will consider evidence from the operator and usually evidence provided by the Driver & Vehicle Agency (DVA) and/or other regulatory authorities.
- 1.5 In all public inquiries the presiding officer may also hear from additional witnesses and, if considered appropriate, may be assisted by a financial assessor.
- 1.6 When the Department has received valid opposition (representation and/or objection) to an application, it may consider that it is appropriate to hold a public inquiry. This gives all interested parties an opportunity to present their case to the Department.
- 1.7 The Department may decide that a public inquiry is necessary in order to clarify information that has been received, which raises concerns. Additionally, the Department must hold a public inquiry if it is considering taking regulatory action against an existing licence and the operator requests a hearing. Furthermore, the Department must hold a public inquiry if it is considering taking regulatory action against a transport manager's good repute and/or professional competence.

2 HOW WILL AN OPERATOR, APPLICANT OR 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 Department will consider.

2.2 Notification of a public inquiry will be dispatched giving at least 21 days notice in relation to an existing goods vehicle operator licence or application and 28 days notice of a public inquiry relating to a transport manager.

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

3.1 The Department publishes an Applications and Decisions document (As & Ds) each week. This document contains details of all applications received by the Department, its decisions and the Public Inquiries to be held. It is available at <https://www.infrastructure-ni.gov.uk/publications/transport-regulation-unit-applications-and-decisions-2020>.

3.2 For goods vehicle operator licences objections can be made by statutory objectors such as Government Departments, District Councils, the police, and certain trade associations and trade unions. They may object to the grant of a goods vehicle 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.

3.3 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 the Department. They are called representors; representations can be made only on environmental grounds.

3.4 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 Department can only take immediate action if it is considered that the operator concerned is operating outside the terms of his/her licence. Otherwise the Department can only act at what is known as the 'Review Date'.

3.5 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.

4 WHO SHOULD ATTEND THE PUBLIC INQUIRY?

4.1 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 Department and will need to provide written authorisation from the board of directors to represent the company at the inquiry. Failure to attend the inquiry could result in the Department determining the case in your absence.

- 4.2 There is no provision to apply for the costs or expense of attendance at a public inquiry and the Department has no power to make any such award.
- 4.3 In the case of an application it is for the objector or representor to decide whether they wish to attend the public inquiry. The Department may attach less weight to its opposition to the application if the applicant does not have the opportunity to question the basis of the opposition.
- 4.4 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 Department provides prior agreement, 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. The Department is unlikely to accept a request to adjourn the inquiry on the day on the grounds that you now wish to be represented.
- 4.5 Your representative should be familiar with the facts of the case and the Department 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.

5 WHAT HAPPENS IF I CANNOT ATTEND?

- 5.1 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 Department will therefore need to know the reasons why the relevant person cannot attend. Where for instance there is a pre-booked holiday the Department may ask for evidence that it was booked before the date of the letter calling that person to the public inquiry.
- 5.2 The Department 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.

6 SPECIAL REQUIREMENTS

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

7 THE PROCEEDINGS – GENERAL ADVICE

- 7.1 These proceedings are formal hearings and persons attending are expected to show respect to others and for the proceedings themselves. The Department officials should be addressed as Sir or Madam, depending on their gender.
- 7.2 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 Department, or impact on the weight given to that person's evidence. Furthermore the giving of false evidence to the Department could result in the matter being referred to the police and criminal charges could follow.
- 7.3 The inquiry is open to members of the public and any other interested parties. The presiding officer will consider, on request, whether to hear certain sensitive evidence in private session, e.g. financial information or personal medical information.
- 7.4 After the clerk has announced the case and given brief details, the presiding officer will outline the nature of the proceedings to ensure that everyone understands why it is taking place and the procedures to be followed.
- 7.5 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 presiding officer 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 or operator, or by a representative acting on their behalf. The presiding officer will also put questions to all parties.
- 7.6 When considering an application the Department will have a copy of all objections and/or representations. The presiding officer 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.
- 7.7 During the proceedings the presiding officer 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.
- 7.8 Finally the Department will consider all the evidence which has been put before it.
- 7.9 **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 presiding officer may take into account.**

8 PROCEEDINGS - VIRTUAL HEARINGS

- 8.1 During the Covid-19 pandemic the Department may direct that your hearing is conducted “virtually” using an online facility. In such cases the Department will provide specific guidance for these proceedings and the public inquiry clerk will be in touch in advance of the hearing to test your connection and assist with practicalities. Access to the hearing should be by way of a computer/laptop/tablet. A mobile phone is not a suitable device for the hearing.
- 8.2 You will be able to join the online waiting room 30 minutes before the inquiry is due to start and you should have 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. **Any additional information that you were asked to provide should be sent to the Department in advance of the hearing, and by the date set within the letter notifying you of the hearing. Any documents produced after this deadline, including the day of the hearing may lead to the Department adjourning the inquiry to a later date.**
- 8.3 You will be asked to produce photographic identification, such as a passport or driving licence, as well as a self-image picture (selfie) in advance of the hearing to confirm your identity. Failure to present the required identification may lead to the Department adjourning the public inquiry. If you are uncertain as to what identification is acceptable you should contact the TRU for clarification.
- 8.4 If, for any reason, the Department is of the opinion during the hearing that the setting does not allow for an appropriate examination of the facts to allow for a properly informed determination, the hearing may be adjourned for a physical hearing at a later date.
- 8.5 If, for any reason, you cannot attend a hearing by virtual means you should notify the Department immediately and your case will be considered for a face-to-face hearings. Due to the current pandemic it may not be possible to schedule a face-to-face hearing for some time.
- 8.6 In scenarios resulting in a virtual public inquiry being adjourned, or a face-to-face hearing being requested, the Department may consider, where a road safety risk is deemed to be serious, to suspend a licence pending the conclusion of the public inquiry.
- 8.7 The public inquiry clerk will bring you into the virtual hearing room in advance of the commencement of the hearing 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.

9 PROCEEDINGS - FACE-TO-FACE HEARINGS

- 9.1 Should you be advised that the hearing will be conducted face-to-face please note that specific measures relating to Covid-19 will be in place, and these will be dependent upon the most up to date advice from the Public Health Agency. Details of these arrangements will be notified to you prior to your arrival at the venue.
- 9.2 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. **Any additional information that you were asked to provide should be sent to the Department in advance of the hearing, and by the date set within the letter notifying you of the hearing. This is important so as to restrict the transfer of materials and increase the risk of spreading Covid-19.**
- 9.3 Objectors/representors/complainants should ensure that they have registered their attendance with the public inquiry clerk who will make a note of the 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.
- 9.4 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 Department adjourning the public inquiry. If you are uncertain as to what identification is acceptable you should contact the TRU for clarification.

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.

10 RECORDING OF THE INQUIRY

- 10.1 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 Department'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 Department.
- 10.2 **Please note that any information that you provide to the inquiry may be disclosed to third parties for enforcement purposes.**

11 THE DECISION

- 11.1 The standard of proof in proceedings before the Department is less than that required for a criminal court case where the test is 'beyond all reasonable doubt'. In a public inquiry the Department 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?
- 11.2 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 presiding officer 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.
- 11.3 All objectors/representors/complainants will receive written confirmation of the decision and a statement of the Department's reasons, if so requested.

12 RIGHT OF APPEAL

- 12.1 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.
- 12.2 The Department can only review its decision to grant or refuse an application if it is satisfied that there has been some procedural irregularity in dealing with it.
- 12.3 A request to review the Department's decision **must** be made as soon as possible and in any event within two months of the date of the original decision. Representors are directed to the 'Guide to making Representations, Objections and Complaints' at [infrastructure-ni.gov.uk/](https://www.infrastructure-ni.gov.uk/).
- 12.4 The Upper Tribunal is an independent judicial body, which was set up to hear and determine appeals against decisions of the Department. Its decisions are published at
- 12.5 The Department seeks to maintain the highest standards of personal and professional conduct. Any complaint that the Department has in some way fallen short of these standards is taken seriously.
- 12.6 A complaint regarding conduct is quite separate to any appeal to the Upper Tribunal that you may wish to pursue.

13 FREQUENTLY ASKED QUESTIONS

What is the Transport Regulation Unit (TRU) and what is its role?

The TRU is a part of the Department for Infrastructure (DfI). The TRU has responsibility for the licensing and regulation of goods vehicle operators in Northern Ireland. It is the TRU that ultimately decides whether to call an applicant, operator and/or transport manager to a hearing. The public inquiry allows the Department 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 an existing licence. The Departmental officials are acting in a judicial capacity when conducting a public inquiry. That means that they have to ensure that, like any other tribunal, the proceedings are fair and free from interference or bias.

How will the Department consider finance?

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

When considering this issue, the Department 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 Department 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.

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

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

When considering good repute and fitness the Department may take into account the operator's 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.

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 Department is considering and if you have any questions relating to this you should contact the TRU for advice.

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 Department 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 (in GB) and the Department (in NI) have issued 'Acquired Rights' certificates to certain transport managers who previously held 'Grandfather Rights'. The holders of Grandfather Rights who were listed on an operator 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 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 repute 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 the Department.

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 the Department finds otherwise, then it can order the transport manager to undertake rehabilitative measures which may include the resitting 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 licence. It is just one of a number of matters which the Department 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 Department 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 Department 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 Department 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 its jurisdiction.

The Department 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 Department 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 Department finds that the requirements are not met then it may refuse an application and/or take action against the licence or your repute/professional competence as a transport manager.

The legislation does allow the holder of a standard licence (but not applicants) to ask the Department for a period of time ('period of grace') to rectify the situation. The Department 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
Transport Manager - 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>

Relevant Legislation

The most commonly referred to legislation for the licensing of operators of goods vehicles is listed below.

The Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010

The Goods Vehicles (Licensing of Operators) Regulations (Northern Ireland) 2012

The Goods Vehicles (Enforcement Powers) Regulations (Northern Ireland) 2012

The Goods Vehicles (Qualification of Operators) Regulations (Northern Ireland) 2012

The Goods Vehicles (Licensing of Operators) (Exemption) Regulations (Northern Ireland) 2012

The Goods Vehicles (Licensing of Operators) (Fees) Regulations (Northern Ireland) 2012

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)

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

Where can I find additional information?

This guide and other goods vehicle operator licensing forms and guidance are available at infrastructure-ni.gov.uk/.

Also available is the Department's publication "Applications & Decisions", which gives details of all goods vehicle operator licence applications received by the Department and the decisions taken on the applications.