



Department for  
**Infrastructure**

An Roinn  
**Bonneagair**

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## ***Practice Guidance Document***

# **CONTINGENCY AND EMERGENCY PLANNING**

*(Temporary updates to Practice Guidance Documents  
No.2, 3, 4 & 8)*

**Commencement**

**18/03/2020**

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## Goods Vehicle Operator Licensing

### Background

- a) The following interim guidance is issued during a period where the country faces an extraordinary challenge. The initial document was drafted with the expectation of an impact on personnel and economic activity, including the administrative capabilities of the licensing and regulation function and the capability to re-establish tribunal hearings.
- b) It is still not possible to envisage every situation which might occur during the current outbreak, and the Practice Guidance Documents describe the application of legal discretions and seek consistent application of the regulatory requirements. The Department will retain its core focus on road safety. However, during this period, the Department recognises there may be challenges for operators in meeting the operator licence requirements.
- c) The Department issues the following Practice Guidance to outline how it interprets the law relating to the application of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010. This Guidance may be subject to decisions of the higher courts and describes powers and discretions to be exercised during the relevant period only.

## CONTINGENCY POWERS

### Standard Operators

1. Article 13 of Retained Regulation (EC) 1071/2009 provides a procedure for the suspension and withdrawal of authorisations, i.e. for Periods of Grace:
  1. *Where a competent authority establishes that an undertaking runs the risk of no longer fulfilling the requirements laid down in Article 3, it shall notify the undertaking thereof. Where a competent authority establishes that one or more of those requirements is no longer satisfied, it may set one of the following time limits for the undertaking to rectify the situation:*
    - (a) *a time limit not exceeding 6 months, which may be extended by 3 months in the event of the death or physical incapacity of the transport manager, for the recruitment of a replacement transport manager where the transport manager no longer satisfies the requirement as to good repute or professional competence;*
    - (b) *a time limit not exceeding 6 months where the undertaking has to rectify the situation by demonstrating that it has an effective and stable establishment;*
    - (c) *a time limit not exceeding 6 months where the requirement of financial standing is not satisfied, in order to demonstrate that that requirement will again be satisfied on a permanent basis.*
  2. *The competent authority may require an undertaking whose authorisation has been suspended or withdrawn to ensure that its transport managers have passed the examinations referred to in Article 8(1) prior to any rehabilitation measure being taken.*
  3. *If the competent authority establishes that the undertaking no longer satisfies one or more of the requirements laid down in Article 3, it shall suspend or withdraw the authorisation to engage in the occupation of road transport operator within the time limits referred to in paragraph 1 of this Article.*
2. An **effective and stable establishment** (Article 5 and Practice Guidance Document No.4) is the premises, which allow the operator to conduct its operations effectively and continuously to meet with the requirements of the licence, including i) any administration necessary for complying with those requirements and ii) appropriate technical equipment and facilities for an operating centre. The Department has interpreted this requirement to allow several sites, for instance an office and a separate Operating Centre, which go to meet this requirement. An operating centre must be specified on a licence and criminal proceedings may result from use of another place without authority.
3. Where a standard operator *temporarily* loses access to an Operating Centre as a result of restrictions imposed during the outbreak, the Department will give serious consideration to the grant of a Period of Grace. The Department will set a starting point of 4 months Period of Grace for qualifying operators. That starting point is intended to allow an extension to the maximum period of 6 months should circumstances require that. The Department will wish to be satisfied as to where

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the vehicles will be parked in the alternative. It is recognised that during the period of the outbreak it may not be practicable to lodge an application for a new Operating Centre, which may only be required for temporary use.

4. **Financial standing** (Article 7 and Practice Guidance Document No.2) is an important means by which a transport business becomes established and is intended to support the maintenance of vehicles and trailers during operation. It is a condition of an operator's licence that changes in financial standing or professional competence are notified to the Department.
5. Retained Regulation (EU) 2020/698 extended the maximum time limit established for financial standing from six to twelve months, with regard to financial assessments covering all or part of the period between 1 March 2020 and 30 September 2020. Where that adverse finding has already been made, and the time limit set by a PoG has not yet expired, it can be extended for a maximum of 12 months to allow for the above. The Department will wish to be satisfied that:
  - the operator is not insolvent
  - there are no outstanding maintenance or other issues, which might impact on road safety
  - that this is not an attempted device to avoid responsibility for alleged failures in compliance.
6. The Department would normally require tangible evidence to show that financial standing can be met in the future but, given the exceptional and short-term circumstances referred to above, it may now rely on a previous satisfactory financial check which meets the new prescribed sum, within the last 12 months, as evidence to support the granting of a Period of Grace. The Department may also accept internet or copy documents, with a check of original documents to be made at a later date. The Department retains its discretion in respect of all standard operators. However, if the qualifying circumstances are met between 1 March 2020 and 30 September 2020, then the Department will consider a starting point of 6 months Period of Grace for qualifying operators. That starting point is intended to allow the Department to make an assessment of the impact on road safety before considering an extension to the maximum period of 12 months, should circumstances require that.
7. **Professional competence** (Article 4 and Practice Guidance Document No.3) requires at least one natural person with a genuine link to the operator and who is qualified with a Certificate of Professional Competence to act as Transport Manager. The Department is aware of the duties summarised in paragraph 43 of Practice Guidance Document No. 4 and may have to take a view on what is practicable in all the circumstances to meet the statutory duty. The conditions on the operator's licence require the operator to notify the Department of matters which might impact for instance on the ability to show professional competence. The Department would not normally expect to be notified of periods of short illness such as the general symptoms described in the current public health guidance. Where a person develops more acute symptoms, it may be necessary to grant a Period of Grace. Recognising the additional challenges of recruitment during the period of the outbreak, the Department has set a starting point of 4 months Period of Grace for qualifying operators. That starting point is intended to allow for an extension to the maximum period of 6 months should circumstances require that.

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### Process for Periods of Grace

8. A standard operator seeking a Period of Grace must proactively apply. That application in effect invites the Department to make an adverse finding that the operator cannot demonstrate that it meets the mandatory and continuing requirement for a stable and effective establishment, financial standing or professional competence. Members of staff within the Department are expected to assist all standard operators with regard to applications for Period of Grace and to advise them of these Directions.
9. Operators must understand that if, upon expiry of a Period of Grace, the requirement has still not been demonstrated then the operator's licence will have to be revoked. For financial standing there is always the alternative of relying on additional sources of finance which might be secured or a voluntary reduction in authority to a level which can be supported.
10. In order to grant a period of grace the Department must first establish that one or more of the requirements is no longer satisfied. It may then allow a period of grace to rectify the situation to be granted from the date of determination that the mandatory requirement is no longer met. The Upper Tribunal decision in *2014/008 Duncan McKee* suggests that the Department will wish to see *reasonable prospects for a good outcome*. Where the reasons for the adverse decision are connected to the outbreak, the Department is entitled to infer that the situation will be time-limited, and that the McKee test is therefore met.
11. The Department will recognise the exceptional nature of the operating environment during this period of uncertainty. It will give serious consideration to the grant of a Period of Grace to those standard operators who require it. In exercising its discretion the Department will include those factors whilst ensuring road safety.
12. Existing restricted goods operators do not have facility to request a Period of Grace but, for instance, might offer an undertaking to the Department for a financial check to be carried out in the future and on a specified date. Use might also be made of temporary exemptions as below.

## INTERIM LICENCES

13. As more fully set out in Practice Guidance Document No.8, interim licences give temporary authority to applicants for a goods vehicle operator's licence. To grant, the Department requires prima facie evidence that the requirements of professional competence, financial standing and good repute are met before granting interim authority for a standard licence. As a matter of consistency this has been interpreted to include fitness and the availability of finance for a restricted licence. The Department may issue an interim licence/variation in the same terms as those applied for or on different terms.
14. Retained Regulation (EC) 1071/2009 allows existing operators to submit annually their audited accounts to demonstrate that the continuing and mandatory

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requirement for financial standing. That allows for any variations in the coming year to be assessed as against those certified accounts as opposed to supplying additional financial evidence at the point of every application. During the period of the outbreak the Department could, exceptionally, rely on an assessment of financial standing within the last 12 months as prima facie evidence to support grant of any interim goods licence. The Department will wish to be satisfied that:

- the operator is not insolvent
- there are no outstanding maintenance or other issues, which might impact on road safety
- that this is not an attempted device to avoid responsibility for alleged failures in compliance.

15. This recognises that the operator would still be under an obligation to notify the Department if the required level of finance was not subsequently available. The Department can take account of any undertakings given when reaching a decision on interim authority. That may include the novel use of time limits as utilised by the Upper Tribunal in *2011/050 A Tucker & Son Ltd*. That may allow the Department to grant interim authority on receipt of an undertaking that it will be surrendered after a specified period, with a specific date to be set by the Department.

## TEMPORARY EXEMPTIONS

16. Section 3 of the Goods Vehicle (Licensing of Operators) Act (NI) 2010 sets out:

*[Other] temporary exemptions*

*(1) The Department may, for the purpose of—*

- (a) enabling an emergency to be dealt with, or*
- (b) enabling some other special need to be met,*

*by notice in writing grant to any person falling within subsection (2) a temporary exemption from any requirement to hold a standard licence which would otherwise be imposed on him by sections 1 and 2 in respect of any vehicle specified in the notice or any vehicle of a class so specified.*

*(2) A person falls within this subsection if the person is engaged exclusively in national transport operations which have only a minor impact on the transport market because of the nature of the goods carried or the short distances over which goods are carried.*

*(3) A temporary exemption granted under subsection (1) permits the person to whom it is granted to use the specified vehicle or (as the case may be) any vehicle of the specified class for the carriage of goods for hire or reward for the purposes of transport operations of his such as are referred to in subsection (2) (and, accordingly, sections 1(1) and 2(6) shall not to that extent apply to that person's use of goods vehicles).*

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- 17.** The Department retains a general discretion to deal with an emergency by granting temporary exemptions from any requirement to hold a standard goods licence.
- 18.** If granted the temporary exemption will allow the person to use a specified vehicle or any vehicle of the specified class for the carriage of goods for hire or reward for the purposes of transport operations.
- 19.** This can be granted to any person, including an existing restricted licence holder.
- 20.** The temporary exemption must be communicated in writing and that notice should specify the period of the exemption with the last day to which the exemption applies. The exemption relieves the applicant of the requirement to hold an operator's licence for a) hire or reward, or b) for or in connection with any trade or business carried on by him.
- 21.** Due to the exceptional circumstances required and the potential impact on the level playing field established under the Goods Vehicle (Licensing of Operators) Act (Northern Ireland) 2010, the Department must first be satisfied that an applicant is not unfit to engage in road transport. Additionally it will wish to be satisfied that:
  - the applicant is not insolvent
  - there are no outstanding maintenance or other issues, which might impact on road safety
  - that this is not an attempted device to avoid responsibility for alleged failures in compliance
  - that the applicant has satisfactory facilities and arrangements for maintaining the vehicles used under the exemption in a fit and serviceable condition.
- 22.** The Department must be satisfied that the grant of the exemption is necessary for the purpose of enabling an emergency to be dealt with (in this case the current outbreak) or enabling some other special need to be met (arising from the outbreak).
- 23.** The Department must be further satisfied that the applicant is engaged exclusively in national transport operations, which will/have only a minor impact on the transport market because of the nature of the goods carried or the short distance the goods are carried. The Department has defined "short distance" as being not outside Northern Ireland. In the exceptional circumstances of the outbreak the Department is entitled to rely on a declaration to that effect signed by the person or officer of the corporate entity (Practice Guidance Document No. 5).

## **ATTENDANCE AT HEARINGS**

- 24.** The Department has recommenced public inquiries using a combination of face-to-face and online hearings. Face-to-face hearings will only proceed where the Department has received legal advice that the Covid-19 Regulations at that time

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allow it to be held, and rules on social distancing will be maintained at all time. Where a hearing cannot proceed using the face-to-face format, or where a presiding officer feels that the case is such that it could be held remotely, then an online hearing will be arranged. These will be conducted using Cisco Webex, and guidance and instructions will be communicated to all attendees in advance.

25. The current restrictions may result in continued delays to hearings for the consideration of new or variation applications. Those operators affected by the continued delays to hearings are invited to make an application for an interim authority, or a period of grace, as outlined above.

## GENERAL DISCRETION

26. Proportionality lies at the heart of the jurisdiction and the Department will consider what is practicable for operators to deliver. As paragraph 17 of Practice Guidance Document 9 advises: *the legal principle of proportionality requires the Department when exercising a statutory function, to make decisions which are commensurate with the circumstances of each individual case and the purposes of the legislation.*
27. There are two clear principles to be drawn from the case law: i) there must be a fair balance between the right of the operator and the interests which the licensing regime seeks to protect, and ii) that a fair balance can only be struck by having regard to what the regime is seeking to protect or achieve, the way in which it seeks to do that and the extent to which the operator can put forward relevant matters. That does not prevent operators from notifying the Department of relevant changes, for instance in maintenance arrangements.
28. What is physically possible may change during the course of the outbreak, but the Department has issued supplementary Advice to Operators which will be updated throughout the course of the pandemic.

<https://www.infrastructure-ni.gov.uk/publications/covid-19-advice-goods-vehicle-operators>



## DOCUMENT CONTROL HISTORY

<b>Version 1.1 (published 26/03/2020)</b>	<b>Version 1.2 (published 18/06/2020)</b>
Background:	Updated to reflect passage of time.
Paragraph 5:	Introduction of Regulation (EU) 2020/698 and the extension of Financial Period of Grace from 6 to 12 months where qualifying conditions are met.
Paragraph 6:	As per paragraph 5.
Paragraph 25:	Update on the current position regarding public inquiries.
Paragraph 29:	Addition of link to supplementary guidance – “Advice to Operators”
<b>Version 1.2 (published 18/06/2020)</b>	<b>Version 1.3 (published 11/09/2020)</b>
Background:	Updated to reduce narrative.
Paragraph 25:	Update on the current position regarding public inquiries.
<b>Version 1.3 (published 11/09/2020)</b>	<b>Version 1.4 (published 18/01/2021)</b>
Throughout:	Updated to refer to EU Regulations as Retained Regulations following end of EU Exit transition period.
Paragraphs 24: & 25	Update on the current position regarding public inquiries.