

Practice Guidance Document No.4

OPERATING CENTRES, STABLE ESTABLISHMENTS & ADDRESSES FOR SERVICE

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GUIDANCE

1. The Department issues the following practice guidance as a guide on the legislation on operating centres and stable establishment.
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”) on behalf of the Department for Infrastructure (“the Department”).

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

3. Under Section 6 of the Act it is an offence to use a place as an operating centre for vehicles authorised on an operator’s licence unless that place is specified as an operating centre in that licence. An “operating centre”, is the base or centre at which a goods vehicle is normally kept. Section 20(3) makes it an offence to contravene any condition attached to an operator’s licence.
4. The Department is obliged to refuse an application or variation application, without considering the merits, unless it is satisfied that notice of the application has been published in one or more local (or regional) newspapers circulating in the locality during the period beginning 21 days before the date on which the application is made and ending 21 days after that date¹. Section 30 allows, with the permission of the Department, for the transfer of an operating centre from one licence to another in prescribed situations². All other applications for an operator’s licence or variation must be published with details of the proposed operating centre and the time and manner for making an objection or representations against the grant of the application. The locality is affected if it contains any place that will be an operating centre if the application is granted³.
5. The Department does have discretion to accept an application if just the form or contents of the notice of application do not comply with the prescribed requirements, and it is satisfied that no person’s interests are likely to have been prejudiced by the failure⁴.
6. Objectors: the following are entitled to make statutory objections⁵ (known as objectors) against the issue of an operators' licence:
 - the Chief Constable
 - a District Council including planning
 - NI Government Departments/ Agencies
 - the British Association of Removers
 - the Freight Transport Association
 - the General and Municipal Workers Union

¹ Section 10(1) & (2), section 17(1) & (3).

² See also Practice Guidance and Instructions on Case Management with regard to applications made under Schedule 1

³ Section 10(4), section 17(5)

⁴ Section 10(3), section 17(4)

⁵ Section 11(2), section 18(2) and Regulation 9 of the Goods Vehicles (Licensing of Operators) Regulations (NI) 2012 No. 261

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- the National Union of Rail, Maritime and Transport Workers
 - the Road Haulage Association
 - the Transport and General Workers Union
 - the Union of Shop, Distributive and Allied Workers
 - the United Road Transport Union
7. Objectors may oppose the grant of an application or variation application⁶. The grounds for making an objection are that the applicant does not meet the following requirements⁷:
- to be of good repute (standard licence) or unfit (restricted)
 - to have available the required level of finance
 - to have adequate facilities or arrangements for maintaining the relevant vehicles in a fit and serviceable condition
 - to have adequate arrangements for securing compliance with the requirements of the law relating to the driving and operation of those vehicles
 - to have an effective and stable establishment (standard licence)
 - to be of professional competence with a designated transport manager who meets the requirements⁸ (standard licence)
 - a proposed operating centre will be unsuitable on environmental grounds.
8. While the Driver & Vehicle Agency is not a statutory objector, procedures have been established to ensure that every publishable application is checked so that all relevant evidence is brought to the attention of the Department. The Department can only act on the basis of admissible evidence as opposed to mere intelligence or suspicions
9. Representors: any person who is the owner or occupier of land within the vicinity of a proposed operating centre can make representations⁹ against the grant of an application or variation application on the ground that that place will be unsuitable due to the use of that site as an operating centre being capable of prejudicially affecting the use or enjoyment of their land. A variation application is any application seeking an increase in the number of vehicles (and trailers if appropriate), or the number of vehicles above a certain weight, to use that operating centre; or to vary any undertaking or condition on the licence relating to that operating centre.
10. Objections and representations must:
- set out the objection or representation
 - set out particulars of the ground on which it is made
 - set out particulars of any matters alleged by the person making the objection or representation to be relevant to the issue to which it relates
 - be signed either by the relevant individual, by all of the partners of a firm or by one of them with authority of the others, or for a company or corporate

⁶ Section 11(1), section 18(2)

⁷ Sections 12A to D

⁸ See Practice Guidance and Instructions on Transport Managers

⁹ Section 11(4), section 18(5)

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- body by one or more authorised persons, or a solicitor acting on behalf of an individual, firm, body or group
- send a copy to the applicant on the same day or the next working day after delivery to the Department
11. An objection to an application or variation application must be made during the period commencing immediately after notice of the application is published and ending 21 days after the date on which notice of the application is published in Applications and Decisions¹⁰.
 12. A representation opposing an application or variation application must be made in the period of 21 days beginning with the date on which notice of the application is published in one or more local (or regional) newspapers circulating in the locality¹¹.
 13. The Department can, if it considers there to be exceptional circumstances, direct that a late objection or representation be treated as made within the prescribed time or in the prescribed manner.
 14. Where the Department receives an objection and/or representations which meet the requirements it may refuse an application or variation application on the grounds that:
 - the parking of vehicles used under the licence at or in the vicinity of the place in question would cause adverse effects on environmental conditions in the vicinity of that place; or
 - the place in question would be unsuitable for use as an operating centre of the holder of the licence on other than environmental grounds
 15. The Department may not refuse an application or variation application on other environmental grounds if:
 - on the date the application was made, that place was already specified on an operator's licence issued by the Department as an operating centre of the holder of that licence, or
 - the applicant has produced to the Department a certificate stating that its use as an operating centre is or would be lawful
 16. The Department must consider every objection or representation which meets the requirements when deciding whether or not to hold a public inquiry.
 17. A site does not become acceptable just because it forms part of an operating centre which is or has been already specified on an operator's licence or was specified on an interim licence specified by virtue of an interim direction or conditions relating to the exercise of the right of any person to appeal or a review under section 34 of the 2010 Act. The Department has power to refuse the application or issue the licence specifying only the site(s) which it considers suitable.

¹⁰ <https://www.infrastructure-ni.gov.uk/publications/transport-regulation-unit-applications-and-decisions-2020>

¹¹ Regulations 11 and 12 of the Goods Vehicles (Licensing of Operators) Regulations (Northern Ireland) 2012.

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- 18.** Section 31 of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 and regulation 14 of the Goods Vehicles (Licensing of Operators) Regulations (Northern Ireland) 2012 describe the relevant factors in determining:
- the suitability of any place on environmental grounds for use as an operating centre of the holder of an operator's licence
 - whether to attach any condition or to vary or remove a condition
 - the environmental impact of the use of any operating centre
- 19.** The relevant considerations are as follows:
- the nature and use of any other land in the vicinity and any effect which the use as an operating centre has or would be likely to have on the environment of that vicinity
 - where the proposed site is, or has previously been, used as an operating centre, the extent to which the grant of the application would result in any material change, which would adversely affect the environment of the vicinity
 - where the land has not previously been used as an operating centre, any information known about any planning permission or application for planning permission relating to the land or any other land in the vicinity
 - the number, type and size of motor vehicles or trailers
 - the arrangements for the parking of motor vehicles or trailers
 - the nature and the times of the use of the proposed site
 - the nature and the times of the use of any equipment installed at the proposed site for the purpose of being an operating centre
 - the means and frequency of vehicular ingress to, and egress from, the proposed site
- 20.** In reaching a decision the Department is entitled to take into account any undertakings offered by the applicant or licence-holder and any conditions that might be attached to the licence in question, and may assume that any conditions so attached will not be contravened. Any decision must be proportionate. The Department may attach any conditions that it thinks necessary for preventing or minimising any adverse effects on environmental conditions arising from use of a site as an operating centre.
- 21.** The Department, however, will not attach or vary a condition to impose new or further restrictions without first giving the applicant or the licence-holder an opportunity to make representations. Conditions may include restrictions on¹²:
- the number, type and size of motor vehicles or trailers which may be at the proposed site
 - the parking arrangements to be provided at or in the vicinity of the proposed site
 - the times of operation, maintenance or movement of any authorised motor vehicle or trailer and the times at which any equipment may be used for those purposes
 - the means of ingress to and egress from an operating centre

¹² Regulation 13 of the Goods Vehicles (Licensing of Operators) Regulations (Northern Ireland) 2012

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- 22.** The Department may review the grant of an operating centre five years from the date of granting the licence, and each consecutive period of five years thereafter, to consider whether to exercise any of the powers under sections 28 and 29 of the 2010 Act. The notice of review of an operating centre must be served on the Operator¹³ at the current correspondence address lodged with the Northern Ireland Central Licensing Office (NICLO) within two months of that date¹⁴. Representations may be made to the Department in relation to a review. Those representations must:
- set out the basis of the complaint and contain particulars of any matters alleged by the person making the representations to be relevant to the issue to which they relate¹⁵
 - clearly identify the person making the representations
 - relate to the relevant operating centre or the land or property in the vicinity which is owned or occupied by the person making the representations
 - be signed either by the relevant individual, by all of the partners of a firm or by one of them with authority of the others, or for a company or corporate body by one or more authorised persons, or a solicitor acting on behalf of an individual, firm, body or group
- 23.** The Department retains discretion to treat representations as valid notwithstanding that they were not in the prescribed manner or made within the period of review.
- 24.** Section 28 of the Act allows the Department to remove an operating centre from a licence on review if satisfied that a site is unsuitable on the grounds:
- that the parking of vehicles used under the licence at or in the vicinity of the place causes adverse effects on environmental conditions in that vicinity (The Department may not give this direction unless representations were made during the period of review (subject to exceptional circumstances))
 - other than environmental grounds
- 25.** Representations shall be disregarded if any adverse effects on environmental conditions would not have been capable of prejudicially affecting the use or enjoyment of the relevant land.
- 26.** If the Department does not remove an operating centre, section 29 of the Act allows it to attach additional conditions and also to vary the licence by directing:
- that any vehicle ceases to be specified on the licence
 - that the maximum number of vehicles and/or trailers authorised be reduced
 - that there be a restriction on the weight of vehicles and/or trailers; or the variation of existing conditions
- 27.** There is special provision for vehicles being used under the terms of The Goods Vehicles (Operators' Licences) (Temporary Use in Great Britain) Regulations 1980 as amended by The Goods Vehicles (Operators' Licences) (Temporary

¹³ See Practice Guidance and Instruction on Legal Entities

¹⁴ Regulation 16 of the Goods Vehicles (Licensing of Operators) Regulations (Northern Ireland) 2012

¹⁵ Section 28(5)(b)

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Use in Great Britain) (Amendment) Regulations 1990, which include provision for the use in Great Britain of Northern Ireland vehicles that have an operating centre in Northern Ireland.

Transfer of operating centres

28. Section 30 and Schedule 1 of the 2010 Act allow for the variation of goods licences where the applicant's (new or variation) proposed operating centre is already specified on another operator's licence (excluding interim licences). The requirements relating to publication in the locality and to the making of objections and representations against the issue of the licence do not apply.
29. The site in question must already be specified on an operator's licence as an operating centre¹⁶. It cannot be a sub-division of that operating centre and no place can be specified on more than the one operator's licence. That is to say, where an operating centre is part of a larger shared site, the transfer is limited to the area specified for use on the donor's licence. Where there are conditions or undertakings attached to the existing licence relating to the use of the site, the applicant must first consent to those conditions being attached to the licence for those restrictions to apply. In determining the application, the Department must take account of whether any new adverse effects on environmental conditions are likely to arise from the use of the operating centre and can take account of any other matters it considers relevant.
30. The Department may refuse the application if any statement of fact made by the applicant was false, whether to their knowledge or not; or any undertaking given or statement of expectation made by the applicant has not been fulfilled.
31. The grant of an interim licence does not give rise to a legitimate expectation such that the Department is prevented from taking subsequent action particularly if made clear that further intervention remains an option¹⁷.

Stable establishment

32. This requirement applies to standard goods licences only. It is set out at Articles 3 and 5 of Regulation (EC) 1071/2009 (see Annex 2) and requires any undertaking engaged in the occupation of road transport operator to have an effective and stable establishment in a Member State. That establishment must be in the Member State in which it is licensed. This is the address where it must keep its core business documents and in particular accounting documents, personnel management documents, documents containing data relating to driving time and rest periods and any other document to which the Department or enforcing authorities may require access in order to verify compliance with the requirements of the licence¹⁸.

In practice these documents will be as follows:

- accounts

¹⁶ See Practice Guidance and Instructions on Operating Centres

¹⁷ 2006/149 A & C Nowell

¹⁸ See licence conditions and undertakings

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- personnel documents
 - tachographs, drivers' hours and working time records
 - driver defect reports
 - preventative maintenance records
 - annual test records
 - prohibitions and related documentation
 - copies of driving licences
 - copy of the transport manager's certificate of competence
 - any other documentation related to compliance with the operator licence requirements
- 33.** The premises must 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. Due to the different nature of the matters to be addressed and the possibility of multiple licences¹⁹ the Department has interpreted this requirement so as to allow a number of sites, for instance an office and a separate operating centre, which go to meet this requirement.
- 34.** The requirement is that once an authorisation *has been* granted, the operator must have at its disposal one or more vehicles. This is different from having vehicles specified on a licence but the vehicle(s) in question must be registered and be capable of being put into circulation in conformity with the legislation of that Member State. The vehicle(s) in question may be wholly owned or, for example, held under a hire-purchase agreement or a hire or leasing contract. An informal or unwritten agreement is unlikely to meet this requirement.

Case law

- 35.** This Guidance may be subject to any decisions of courts and to subsequent legislation. The Department has extracted the following principles and examples have been extracted from existing case law. As the legislation suggests, the case law is mainly concerned with goods vehicle applications.

General approach

- 36.** Whilst the Upper Tribunal has set out a general approach to public inquiries involving operating centres, the principles can be equally applied to the whole process of considering an application and in particular any opposition. If determining a matter at a public inquiry the Upper Tribunal has stated that: "*It would be advantageous...that the presiding Traffic Commissioner at the beginning... sets out the extent of his or her jurisdiction and the nature and type of evidence he or she can and cannot take into account. This may assist in focusing the minds of all participants...upon the evidence that is relevant*"²⁰. It is also helpful if the Department's staff also adopt this approach when considering matters "on the papers" and that objectors and representors are reminded of the limits of the Department's powers when they are being notified of decisions or proposed decisions. The Department will therefore adopt the same approach and

¹⁹ See Practice Guidance on the Delegation of Authority

²⁰ 2001/084 GR Way

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expects that applicants or operators are aware of the various guidance documents issued on its behalf²¹.

Normally kept

- 37.** The Department's jurisdiction in respect of an operating centre is limited to vehicles authorised by the operator's licence which are kept there and does not extend to visiting vehicles. The issue of where a vehicle is normally kept when not in use is a question of fact and degree in each case and so it will therefore fall to the Department to make the necessary findings²². Consequently this is a difficult area and there is little guidance that can be issued in this regard. The Upper Tribunal has found against operators where in one instance a fifth of an operator's vehicles were parked away from the operating centre on most weekends²³ or outside the operator's home for a few weeks²⁴ and where an operator has previously been warned. Whilst considering the drafting of conditions the Upper Tribunal has in other cases relied on the dictionary definitions for instance 'occasionally' where an event occurs 'infrequently' and/or 'irregularly'²⁵.
- 38.** The requirement to respond to correspondence sent on behalf of the Department and to keep it informed of changes of address is an important one, even where no vehicles are specified. A failure to do so can result in severe action²⁶ being taken against an operator's licence. Section 23(9)(d) of the 2010 Act gives the Department the power to remove any one or more places specified as an operating centre from the relevant licence²⁷.

Adverts

- 39.** The Upper Tribunal has been explicit in its decisions regarding adverts: Section 10 of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 is clear in its terms: namely that the Department shall refuse an application without considering the merits unless section 10(2) (new) or 17(3) (variation) have been complied with. Section 10(2) and 17(3) require an applicant to publish a notice of the application in a local (or regional) newspaper, circulating in the locality, within the period of 21 days before or 21 days after the application is made. This, on first reading, effectively gives operators and applicants an apparently wide six week period in which to place a correctly worded advert and it is unsurprising that the Upper Tribunal has felt that it has no alternative other than to interpret the section narrowly.
- 40.** The result of the refusal of the advert is that a completely new application has to be made. This not only adds significantly to the burden on the applicant/operator but also on the staff who will find themselves dealing with an entirely identical application almost immediately. The Department is of the opinion that it is only at

²¹ 2012/346 MGM Haulage & Recycling Ltd

²² 2000/14 Reids Transport In Smit Reizen v Minister van Verkeer en Waterstaat (C-124/09) The European Court of Justice referred to Skills Motor Coaches Ltd v Denman [2001] All ER (EC) 289 in defining the operating centre for the purposes of drivers rest periods as the place to which a driver is usually attached, namely the transport undertaking facilities from which he usually carried out his service and to which he returned.

²³ 2003/147 W C Hockin

²⁴ 2006/277 M J Fenlon

²⁵ 2010/297 W P Commercials

²⁶ 2005/411 Frank Maas (UK)

²⁷ 2002/020 HAUC

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the point of consideration of the application that the staff will be able to ascertain if the advert falls within the 21-day provision. In cases where it does not, in many instances it may be too late for the applicant/operator to re-advertise. Similarly, staff may consider adverts that have been placed by the applicant/operator within the 21-day period before the submission of the application and there may be difficulties with this advert and by the time this can be communicated to the applicant/operator the 21-day period cannot be complied with.

41. The Department does not consider the current situation to be desirable and that there should be appropriate time limits for documents to be provided for certain parts of legislation to be complied with but this must be considered along with the effect of a strict interpretation of Section 11. In considering this matter, the Department has also given careful consideration to the purpose of section 11. It is there to ensure that those who are entitled to make objections and representations against the specification of a proposed operating centre are given proper notice of the application by an advert in the local (or regional) newspaper. In reality those reading that newspaper will be highly unlikely to be prejudiced by the acceptance of an advert that falls outside the 21-day period by a short period of time²⁸.
42. Consequently, the Department is of the opinion that where an application does not apparently comply with section 10(2) or 17(3), the relevant date is as follows: either (a) the date that the application is first considered by a caseworker or (b) the date of signature of the application provided that this date is no more than 14 days before the date of actual receipt at the Central Licensing Office.
43. In contrast there is discretion given to the Department in relation to the content of the advertisement²⁹. But even then adverts must be in the clearest of terms and an advertisement which, for instance, fails to state the correct number of vehicles being applied for, does not fulfil that requirement: *the purpose of the requirement to advertise ...is to ensure that members of the public whose use and enjoyment of their land may be adversely affected by the operation of vehicles under a licence shall have an opportunity to make representations to the Department*³⁰.
44. The Legislation refers to 'one or more local newspapers, circulating in the locality' and this has not been fully considered or defined in case law and it has therefore proven difficult to ensure a consistency of approach. Furthermore, some applicants and operators have chosen to place the advert in some newspapers that are not normally regarded by people living in the locality as the "local" newspaper.
45. The intention of Sections 10 and 17 can be inferred from 10(3) and 17(4), where explicit reference is made to prejudice, namely to potential representors. The intention is therefore to alert owners or occupiers of land within the vicinity. The Department will not be criticised where it refuses to accept adverts which do not

²⁸ Section 10(2) states that if the advert is not published 21 days either side of the date on which the application is made, a traffic commissioner must refuse the application without consideration of the merit

²⁹ 2003/120 JCM Print Services, 2003/169 Project 2000 Europe

³⁰ 2011/048 Stripestar Ltd t/a Halshaw Burnley Ford

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contain the required information such as the details for lodging representations³¹. The correct approach is to consider whether the application has been correctly advertised and if not, whether the failure is likely to have prejudiced the interests of other people³². Where an applicant declines to employ credible advertising to meet the objects of the statute, not only will this result in consequent delay, but might also go to issues of fitness and/or to decisions on whether to admit late representations.

46. To ensure a consistent approach the Department now issues the following guidance:
- for Sections 10(2) and 17(3) to be complied with, the Department must be satisfied that the advert is placed in 'one or more local newspapers circulating in the locality' and considers regional newspapers to meet that criteria
 - A list of accepted local / regional newspapers, and national newspapers which shall not be accepted, is attached at Annex 1. Advertisements in publications not listed at Annex 1 will be assessed further by the Head of TRU

Available

47. The Department cannot and should not become involved with matters of planning law or consent³³. Certificates of Lawful Use or other permissions from bodies such as the Waste Regulation Authority may be sufficient;³⁴ although a Certificate will only be valid for the purposes of Section 13(3) or Section 18(7)(b) if it complies with the wording by stating that the use of a site is "as an operating centre for vehicles used under any operator's licence is or would be lawful". In any event the existence of a Certificate will not prevent the Department from refusing an application under section 13(2)(a) or 18(6)(a)³⁵. A site is available, pending a final determination³⁶ but it must actually be available at the date of determination not a date in the future³⁷. The Upper Tribunal has directed that the Department should not be invited or expected to investigate or resolve outstanding questions of property law: If the operator shows that they are the owner or tenant of the land in question there is no obligation on the Department to study the title deeds to ensure, for example, that they do not contain a covenant which would prevent the land being used as an operating centre if it became clear to the Department that proceedings had been commenced, which would decide whether or not the land could lawfully be used as an operating centre, the Department would need to consider very carefully whether or not it was appropriate to wait until those proceedings had been resolved³⁸. The Department must simply be satisfied that the site is 'available' for use as an

³¹ 2009/526 Davis Roofing Ltd

³² 2012/059 Kevin Smith t/a Midland Marble, 2003/116 A Reid

³³ Surrey CC v Paul Williams (t/a Garden Materials Landscaping) v SoS for Transport [2003] EWCA Civ 599 on appeal from 2001/56)

³⁴ 2002/029 T C Atkinson

³⁵ 2016/036 Darren John Worsley

³⁶ 2003/087 J Hansford

³⁷ 2010/060 Subic Solutions Ltd

³⁸ 2004/202 David Holloway

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operating centre³⁹. If the position is that the applicant has no right of way over the point of access, then it is difficult to see how the operating centre could be available⁴⁰.

Suitable

- 48.** It is for the applicant to satisfy the Department that a proposed site is suitable as an operating centre⁴¹. Section 12C of the Goods Vehicles (Licensing of Operators) Act (NI) 2010 requires the Department to view “suitability as a whole” rather than subject to the limitations on conditions as set out at section 20⁴². There are limitations, however, to the Department’s jurisdiction: “matters to do with the condition and suitability of a particular road which inter alia have significance for road safety can also have significance in a totally separate environmental context”⁴³. The case law acknowledges that the Department and GB traffic commissioners frequently have a difficult task when dealing with environmental matters and that the situation is exacerbated if planning and highway authorities have chosen not to become involved. In such cases the Department should ignore planning or other objections in the absence of the appropriate authority⁴⁴. It is for those with responsibility for roads to decide whether a public highway is suitable and/or safe for any particular use⁴⁵ whereas the TRU’s jurisdiction is limited to consideration of access safety at the point the authorised vehicles first join the highway and that otherwise the suitability of the highway and road safety are irrelevant considerations (as is inconvenience caused to other road users) and vibration caused by vehicles passing on the highway travelling to and from the operating centre. It follows that TRU cannot refuse an application on the basis of the suitability of a public road⁴⁶.
- 49.** The Department should make a distinction between activity on the site lawfully undertaken irrespective of the site being specified as an operating centre and activity incidental to the site being specified as an operating centre. Light pollution and general noise may occur irrespective of whether the site is in fact an operating centre. The Department will analyse the evidence carefully and differentiate between those matters which relate to use as an operating centre⁴⁷.

Opposition

³⁹ The Department should be alive to the risks of becoming involved: whereas enforcement notices could not previously be challenged except under NI Planning legislation, the case of R (on the application of Aktunkaynak) v Northamptonshire Magistrates’ Court [2012] EWHC 174 Admin raises the prospect of an argument that the notice has caused injustice. These are issues outside the Department’s jurisdiction in regard to the Goods Vehicle Act 2010

⁴⁰ 2013/085 Karl Dyson & Bryan Dyson

⁴¹ 1998/K30 King Automotive Systems

⁴² 1999/L34,37,41 Norman Marshall Ltd v W Sussex CC and Horsham DC and others

⁴³ 1990/B52 J Simms t/a Ukiston Haulage and Storage v Nottingham CC

⁴⁴ 2005/356 Edwards Transport (Shropshire)

⁴⁵ 1987/Y17 Scorpio International Ltd v Lancashire CC & South Ribble BC

⁴⁶ 2003/157 North Kent Recycling meaning of a road section 58(1) of the Goods Vehicles (Licensing of Operators) Act 1995: highway remains a road even though the public may be temporarily deprived of access to it.

⁴⁷ 2008/335 Greaves Surveying and Engineering

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- 50.** The status of representations should be considered before the Department takes their contents into account (see paragraph 7). Representations received from a person living some distance away have been dismissed by the Upper Tribunal but may have been admissible if the person was genuinely representing the interests of local inhabitants⁴⁸. There is no definition of ‘in the vicinity’. It is for the Department to decide in relation to each case. The Upper Tribunal have observed “that in principle somewhere less than 100 yards might not be in the vicinity and somewhere more than a mile away might be in the vicinity. It all depends on the context”⁴⁹. Section 18(5) in effect is the test that determines when land can be found to be in the vicinity. There is no general discretion as to content and format or the timing of representations, as those requirements are set out in the regulations. The discretion to admit representations outside those requirements can only be exercised in exceptional circumstances⁵⁰. The ‘ear shot’ test⁵¹ has been extended and visual intrusion can amount to a relevant consideration in the context of assessing the adverse environmental effect of a proposed operating centre⁵². The extent to which adverse environmental effects emerging from the site itself can be heard or felt will sometimes be difficult to decide particularly where similar effect might be caused by other plant or visiting vehicles⁵³. A resident living nearest to the site may carry more weight than others who live further away⁵⁴.
- 51.** An objection is valid if made within the prescribed time limit, is clear as to the basis of the objection and gives sufficient detail of the nature of the objection. That being the case the Department is bound by virtue of the Goods Vehicles (Licensing of Operators) Regulations (Northern Ireland) 2012 to consider the objection in deciding whether or not to hold a public inquiry⁵⁵. The Department is not; however, bound to call a public inquiry⁵⁶.
- 52.** Where the application is opposed on environmental grounds the Department must consider whether the application (if granted) is likely, within the meaning of regulation 14 of the Goods Vehicles (Licensing of Operators) Regulations (Northern Ireland) 2012, to adversely affect the environment of the vicinity. In relation to any representations or complaint of adverse environmental impact, the matters complained of must amount to a real interference with the comfort or convenience of representors and the matters complained of must be related to the effect which the use of the land as an Operating Centre has, or would be likely to have, on the environment of that vicinity⁵⁷.
- 53.** It is not unusual for the Department to receive anonymous information, for instance, about the conduct of operators. The statutory position is that there is a mandatory requirement in section 11(7) of the 2010 Act for a representation to be made within the prescribed time and in the prescribed manner, both of which are set out in regulations. A representation must be made within 21 days

⁴⁸ 2004/315 MME Services

⁴⁹ 2013/031 Tunnell Grab Services Ltd

⁵⁰ 1984/V22 UK Corrugated Ltd

⁵¹ 1986/X25 Surrey County Council and Surrey Heath Borough Council v Rupert William Carter & Nicholas David Carter t/a Express Hay & Straw Services

⁵² 1984/V22 UK Corrugated Ltd

⁵³ 1988/Z37 Ings Transport Ltd and Others

⁵⁴ 2008/542 Absolute Scaffolding Services

⁵⁵ 2005/145 Norfolk County Council

⁵⁶ 2003/145 Norfolk CC v Woodgrove

⁵⁷ GR Way (as above)

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beginning with the date on which the notice of the application was published. In addition to sending a copy of the representation to the Department, Regulation 10(2) of the Goods Vehicles (Licensing of Operators) Regulations 2012 provides that a copy of the document delivered to the Department “*shall be sent to the applicant on the same day as, or the next working day after, the delivery to the Department.*” Section 11(8) of the 2010 Act gives the Department discretion to treat a representation as “*duly made*” even though it was not made in the prescribed manner in “*exceptional circumstances that justify it doing so*”.

54. The Department must be alive to the potential problems which might arise if an applicant is not sent a copy of a representation which is considered to have been duly made. Any failure to ensure that the applicant is not fully informed of the substance of any un-copied representation runs the risk that there will be a breach of natural justice⁵⁸. In the alternative, the Department might request a report from the Driver & Vehicle Agency (DVA) on technical suitability and if so must then disclose the contents of that report to all parties. The Department is then entitled to attach what weight to the report that it sees fit. If the anonymous information is not confirmed during the course of the investigation, no further action about that anonymous information should be taken⁵⁹.
55. It is open to the Department to admit evidence from local residents who have not met the requirements to be treated as a valid representor by calling them as witnesses⁶⁰. In doing so they should ensure the fairness of any future proceedings and witnesses may be required to provide statements in advance so that they can be disclosed to the parties⁶¹. The applicant must have the opportunity to consider and respond to any evidence prior to a decision on the application⁶².

Conditions and Undertakings

56. It is for the Department to make an assessment of the necessity of any restrictions⁶³. The Upper Tribunal has indicated that having been to the site the *Regulator* is in the best position to make an assessment of its suitability as an operating centre⁶⁴. Section 21 provides that a request for an interim licence shall be treated as an application for an operator’s licence to include section 20, which gives power to impose conditions.
57. If the Department has any doubts as to the suitability of an operating centre, careful thought should be given to the question of whether practical, realistic and enforceable conditions can be devised to prevent or minimise any adverse effects on environmental conditions arising from the use of a place as an operating centre⁶⁵. The Upper Tribunal has referred to these powers as giving the opportunity to reach a balanced outcome by sufficiently reducing noise or other relevant environmental impact of the operation on local residents, whilst not seriously damaging the operator’s business⁶⁶.

⁵⁸ 2010/034 WP Commercials

⁵⁹ 2005/357 J Bayne & Sons, see Practice Guidance and Instruction on Case Management

⁶⁰ 2005/356 Edwards Transport (Shropshire)

⁶¹ See Practice Guidance and Instruction on Case Management

⁶² J Bayne & Sons (as above)

⁶³ 2009/515 Les Searle Plant Hire & Sales Ltd

⁶⁴ 2001/056 Paul Williams t/a Garden Materials Landscaping

⁶⁵ 2011/050 A Tucker & Son Ltd

⁶⁶ 2008/542 Absolute Scaffolding Services Ltd

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- 58.** The Department has to decide whether the site is suitable for use as an operating centre but may take into account any conditions that could be attached to the licence under section 20 of the 2010 Act and may assume that any conditions so attached will not be contravened. It is not necessary to wait until those actions are carried out. Whether action is required in order to make a site suitable particularly with regard to ingress or egress or any road (other than a public road) will depend on the individual facts of a particular case⁶⁷. If the work is straight forward and agreed then it might be appropriate for the Department to grant with a condition to carry out the proposed improvements. As with any condition the obligation is imposed on the operator; it is for the operator to ensure that it can comply⁶⁸.
- 59.** The power to attach conditions to an operator's licence only arises once the Department has decided to grant an application. It is at that stage that it should give the applicant an opportunity to make representations⁶⁹. There may be pre inquiry correspondence with different parties but once the Department has decided that a public inquiry is necessary there is no expectation to commence a process of negotiations around possible conditions⁷⁰. The Department's power to impose environmental conditions under section 20(1) of the 2010 Act can only be exercised on issue of licence or if it decides to vary the licence and is satisfied that the variation would result in a material change as regards the operating centre, or its use which would adversely affect the environment as prescribed by regulation 14(1)(b) of the Goods Vehicles (Licensing of Operators) Regulations (Northern Ireland) 2012. The Upper Tribunal has approved of attempts to clearly define terms used in conditions so that parties are clear about the restrictions⁷¹ giving dictionary meanings to the term 'occasionally' where the occasional need to return outside restricted hours was deemed to be reasonable: an event occurs occasionally if it happens 'infrequently' and/or 'irregularly'. In other words the variation of the condition to permit occasional out of hours movements will not allow the operator to make a habit of returning late.

Site visits

- 60.** *"Traffic commissioners decide many applications "on the papers" and it is neither necessary nor practicable for them to conduct site visits as a matter of course when they do so. Recent developments in technology mean that traffic commissioners determining cases "on the papers" are now able to obtain a very clear picture of the proposed operating centre and the surrounding environment. Where a traffic commissioner has visited the location before reaching a decision is often a matter to which much weight will attach"*⁷².
- 61.** In certain circumstances it may be advisable for the Department to request a site visit by qualified staff and make an assessment on the necessity of any restrictions. Although an office based review may be possible where the premises

⁶⁷ 1999/L11 Malcolm Stonehouse v. Surrey County Council

⁶⁸ 2008/407 Surrey CC v Rybak-Rajewski

⁶⁹ 2000/032 T Saunders & Sons

⁷⁰ A Tucker & Son Ltd (See above)

⁷¹ 2010/034 WP Commercials Ltd

⁷² Per Rex LJ in Surrey CC v Paul Williams (t/a Garden Materials Landscaping) v SoS for Transport (as above)

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are clearly described in plans and photographs⁷³. In cases where further action is required in order to make a site suitable there is no further requirement on the Department to request a visit⁷⁴. As it is entitled to take into account work still to be carried out, and it is not necessary to wait until those actions are carried out,⁷⁵ it would be a legal nonsense to suggest that there is a mandatory requirement for the Department to visit every site where an application is opposed. It is regarded, however, as essential for them to conduct a site visit before presiding over any public inquiry convened with regard to the suitability of the proposed operating centre.

Review

- 62.** Whenever the Department determines that an environmental review of an established operating centre is appropriate in order to consider the environmental impact of vehicle operation, it must carry out a careful balancing of the rights of the operator to continue to operate from an established site and the rights of local residents to quiet enjoyment of their property. This may require a detailed analysis of the evidence be undertaken to determine the precise nature of the complaints and to whom they should be directed⁷⁶.

Address for service, correspondence and contact

- 63.** An important aspect of the trust which lies at the heart of the operator's licensing regime is that the Department must be able to rely on an operator having in place⁷⁷:

- addresses at which the operator and transport manager can reliably receive important correspondence (whether from the Department, an enforcing authority or any other significant source)
- a system which ensures that correspondence is fully answered, within any time limit that has been set, or else within a reasonable time limit and that where documents are requested they are sent

Failure to respond might justifiably lead to suspicion that there has been an unauthorised or un-notified change with the result that the Department cannot actively regulate⁷⁸. If an operator has been given proper notice of a hearing and fails to attend the operator cannot justifiably complain at a later date⁷⁹.

- 64.** Efforts are made to reduce the number of incomplete applications with minor changes or clarification of relevant legislative provisions being dealt with by email or in person, with a record of any decision made. Members of the Department's staff might follow the sensible practice of recording the gist of the conversation but the obligation is on the operator or applicant to communicate appropriately. The Upper Tribunal has therefore cautioned operators and applicants to respond to any important correspondence by either sending a letter or an email⁸⁰.

⁷³ 2009/515 Les Searle Plant Hire & Sales Ltd

⁷⁴ 1999/L11 Malcolm Stonehouse v. Surrey County Council

⁷⁵ 2008/407 Surrey CC v Rybak-Rajewski

⁷⁶ 2007/168 M & M International Ltd

⁷⁷ 2010/056 Mohamed Aslam t/a Instant Freight

⁷⁸ 2009/488 D&A Lawrence t/a The Roseglan Hotel, 2010/048 Anthony Edwards t/a 'Jim Bertie Ltd'

⁷⁹ 2010/036 Suzanne Stoneman t/a Keith Travel

⁸⁰ 2010/005 Gary James t/a James Transport

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Examples include call-up letters and proposals to revoke a licence or refuse an application. Where an operator or applicant seeks to rely on a communication with the Department, they will be expected to produce a copy, for instance of an email or letter, upon request.

- 65.** The legislation sets out requirements for the notification of proceedings⁸¹ which allows service by post to the proper address and in the case of a partnership to any partner. The Upper Tribunal has taken a purposive approach in interpreting the 1995 requirements so as to allow notice by letter attached to an email⁸². Actual proof that the relevant notice has come to the attention of the person or body concerned is not required⁸³. Although a comprehensive approach has been encouraged as with other tribunals there is no requirement to send call-up letters by recorded delivery⁸⁴, any document served by post (properly addressed, prepaid and posted) will be deemed to have been served at the time at which the letter would be delivered in the usual way by post, unless proved otherwise⁸⁵. The acceptable methods of communication are set out at paragraph 116 below. The Upper Tribunal has advised the relevant staff to consider which of the known proper addresses appear to offer best chance of bringing the matter to the attention of the party⁸⁶. The operator/applicant is responsible for what happens to the letter once it arrives⁸⁷. A registered address for company or LLP law or other purposes such as the register held by the Charity Commission is just as effective for all other correspondence⁸⁸. It is incumbent on the operator to ensure that the notified address is kept up to date⁸⁹. A bare assertion that the operator informed the Department of a change of correspondence address is unlikely to be sufficient evidence of notification⁹⁰.
- 66.** A letter inviting the operator/applicant or transport manager to attend a public inquiry should be sent in accordance with the legislative requirements. The provisions in regulation 14(1) of the Goods Vehicles (Qualification of Operators) Regulations (Northern Ireland) 2012, requiring notification to be served of the right to make representations where action against the transport manager is in contemplation, are directive rather than mandatory⁹¹. The letter should also invite operators to make representations to the Department prior to the inquiry in line with the principles of good regulation. As a regulator, the Department must take into account the provisions of the Compliance Code and give them due weight in developing policies or principles but are not bound to follow a provision of the Code if the Department concludes that the provision is either not relevant or is outweighed by another relevant consideration nor in individual cases. The Code has no application in individual or judicial decisions.
- 67.** There is no requirement on the Department to engage with applicants and/or operators prior to or during proceedings except within the protections allowed at

⁸¹ E.g. regulations 18 and Schedule 3 of the Goods Vehicles (Licensing of Operators) Regulations (NI) 2012.

⁸² 2014/074 Highway International Ltd

⁸³ 2000/034 Solent Travel

⁸⁴ 2010/043 Stephen Mcvinnie t/a Knight Rider

⁸⁵ Section 21 of the Interpretation Act (Northern Ireland) 1954

⁸⁶ 2014/074 Highway International Ltd

⁸⁷ 2010/047 Nelson Rogers & Francis Rogers t/a Rogers Fencing, 2010/041 Darren Smith t/a DMS Scaffolding

⁸⁸ 2009/455 Martini Scaffolding Ltd

⁸⁹ 2010/398 Anthony Edwards t/a Jim Bertie Ltd, 2010/051 John Perrin t/a JP Scaffolding

⁹⁰ 2012/345 M E Kinsley t/a Diamond Fitzgerald Travel, regulation 25 Goods Vehicles (Licensing of Operators) Regulations 1995 and 2012/021 WBM Scaffolding Ltd, 2011/068 Truckit 247 Ltd

⁹¹ 2000/059 Dolan Tipper Services

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public inquiry⁹². The Department should be wary of being drawn into any process of consultation prior to taking statutory action, in view of their wider duty to the public at large⁹³ and to the fairness of proceedings.

⁹² Al-Le Logistics Limited etc. [2010] EWHC 134 (Admin)

⁹³ R v Falmouth & Truro Port Health Authority ex parte South West Water [2001] QB 445

INSTRUCTIONS

Basis of Instructions

- 68.** These Instructions are issued in respect of the approach to be taken by staff acting on behalf of, or in support of the Department with regard to operating centres⁹⁴ and, for standard licences, an effective and stable establishment.
- 69.** Any decision relating to an operating centre relies on the quality of the submission. Decisions on whether to allow opposition, where it does not meet the criteria, and/or to require a hearing, fall within the discretion of the Department⁹⁵. In reaching that decision they are assisted by the case submissions prepared by TRU and NICLO. A submission should refer the Department to the relevant information, should be succinct and should refer to the relevant evidence and legal provisions. Submissions need to be accurate and any recommendation must be adequately explained by staff acting on the Department's behalf⁹⁶.
- 70.** It may be necessary, particularly where the proposed site is within a residential area or opposition has been received, for staff members to consider any publicly available images. However, caution should be exercised as a given post code may not provide an image of the specific parking location. It may therefore be preferable to seek details from the applicant rather than risk delaying the application unnecessarily where there is likely to be any contention.
- 71.** Case law makes clear that there is no requirement on the Department to engage in discussions with applicants and/or other parties before reaching a preliminary decision on whether to call them to a hearing. In dealing with interested parties on behalf of the Department, members of staff should keep in mind that it may ultimately be necessary to consider the relevant application at a public inquiry and the need to ensure that those proceedings are fair⁹⁷. Any information to be relied upon should be capable of being disclosed in advance of a hearing or risk an unnecessary adjournment.
- 72.** In the course of processing an application it may be appropriate to request further comments on documents such as responses from the parties and/or DVA's findings. Each communication with a party should specify a given timetable, the steps required and the potential consequences if a party fails to respond. As the case law suggests correspondence should also make clear the extent of the Department's jurisdiction.

Stable establishment

- 73.** As stated above at paragraphs 31 – 33 this requirement applies to standard licences only and these Instructions are to be read in conjunction with those paragraphs.

⁹⁴ See also Practice Guidance and Instructions on Case Management with regard to Schedule 1 applications

⁹⁵ See Guidance on the Delegation of Authority

⁹⁶ 2016/0187 Eric Leslie Brown

⁹⁷ See also Practice Guidance and Instructions on Case Management

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- 74.** The requirement is not intended to impose a disproportionate burden. Where it is suggested that there may be no stable establishment, for instance where all specified vehicles are removed from the licence, it will be for NICLO to write to the operator in question seeking an explanation and to then make a submission to the Head of TRU. If there is no response and no other compliance issues arise then the case should be passed to the decision maker. Where it is established that the operator fails to meet this requirement, this may amount to a breach of condition but it is open to the Department to allow the operator a period of up to six months to rectify the situation on a first occasion by demonstrating that the requirement for an effective and stable establishment is now met, but with a warning to prompt future compliance.

Operating centres

Objections

- 75.** The relevant legislation and case law are set out in detail in the Guidance above and these Instructions are to be read in conjunction with that Guidance.
- 76.** In addition, caseworkers are reminded that environmental objections may be made under the provisions of section 11(1) (applications) and section 18(2)(a) and (4)(a) (variations) of the 2010 Act. Objections are not limited to factors that might result in prejudice to the use or enjoyment of the land in question but may include:
- noise
 - fumes
 - pollution
 - vibration
 - visual intrusion
- 77.** If the objection meets the requirements i.e. it is properly signed, has been copied to the applicant on the same or next working day after delivery to the Department and specifies the grounds on which it is made, NICLO may write to the objector seeking particulars of any alleged matters. Staff will then usually write on behalf of the Department asking for further information about the proposed use of the operating centre and to seek comments on the matters contained in the objection. The applicant and the objector should be encouraged to try to resolve any possible differences between them through direct liaison.
- 78.** The Department may decide that it has sufficient information to make an informed decision on the application or may decide to hold a public inquiry to hear evidence from both parties before reaching a decision on the application⁹⁸. If the Department considers that it has sufficient information to determine the application without a public inquiry it may advise relevant parties of his/her intended decision, they may also be invited to make further representations in writing or request that the matter is considered at public inquiry.

⁹⁸ See Practice Guidance and Instructions on Case Management

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Representations

- 79.** The relevant legislation and case law are set out in detail in the Guidance above and these Instructions are to be read in conjunction with that Guidance.
- 80.** In addition, caseworkers are reminded that the statutory provisions refer to a person who is the owner or occupier of land in the vicinity of any place that might be used as an operating centre. The legislation does not define the term 'vicinity' but based on case law the Department has determined that a property which might be prejudiced by the following could be said to be within the vicinity:
- noise – from the applicant's vehicles moving in and out of, and while at, the operating centre. This may be intrusive in the neighbourhood, bearing in mind the use of other land in the surrounding area and the intended hours of operation
 - 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
- 81.** As the legislation suggests the cause of these grounds must be from the use or potential of the relevant site as an operating centre including where vehicles first join a public road on their way to or from the site. Factors such as the use of the public road network are outside TRU's jurisdiction. The Department may consider that some people who respond to an advertisement live too far away from the operating centre to be affected by it and may not, as a result, accept their representations as valid.
- 82.** Residents associations and action groups cannot make representations unless they are owners or occupiers of affected land within the vicinity of an operating centre. Groups of residents or others who cannot be accepted as representors can consider the merit of approaching statutory objectors, such as local authorities, in order to put their case and ask them to consider making an objection.
- 83.** Petitions can only be accepted if it is clear from the face of the petition who is opposing the application, that they accept all the grounds and that they have all signed the petition, or a solicitor acting on behalf of the individual, has done so. The substance of the petition must be relevant to all signatories and the full name and address (including post code) should be provided for all signatories. The original of the petition should be made available to the Department. Where a petition is received, members of staff should submit the contents to the Department to decide whether it can be treated as valid. The Department may direct that each signatory be contacted on an individual basis. If the Department decides to proceed with a petition then it may also require one person to be nominated as the contact point.

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- 84.** The owners and/or occupiers of land or buildings near an operating centre who feel that the use or enjoyment of their own land would be prejudicially affected by the proposed operating centre use can make representations against the grant of an application. For a representation to be treated as valid it must:
- be made in writing to the Central Licensing Office address shown in the advertisement. There is no set form but the grounds must be clearly stated
 - be made within 21 days of the date the advertisement appeared in the newspaper
 - be signed. If an individual makes a representation it must be signed by that person. If it is made by a firm or by a corporate body it must be signed by one or more persons authorised to sign by that group of persons. A solicitor acting on behalf of a representor, be it individual, firm or other group may sign on their behalf
 - state relevant grounds
 - be copied to the applicant on the same day, or next working day, as the representation is made to the Department
- 85.** A representation cannot be treated as valid unless the above requirements have been met or the Department is satisfied that there are exceptional circumstances to justify accepting the representations. Examples might include where the owner or occupier of a relevant property has been away from their property for the period of the advert but the Department may seek evidence of this absence.
- 86.** An applicant should be clear as to what information might be relied upon in opposition to its application. Representations should be acknowledged and, where it is necessary to determine whether the criteria have been met, supplementary information may be sought. Representors should be clear as to whether their opposition is being treated as a valid representation and that they may therefore be involved in future consultation on the application. The applicant will normally be asked for their views on the matters raised by any representors and, where appropriate, they will be asked to liaise direct with representors to see if any differences can be resolved without formal intervention by the Department. As suggested above the Department may also ask DVA to arrange a visit and report on the proposed operating centre.
- 87.** The Department will then consider if it needs to hold a public inquiry to hear the evidence of both sides, (i.e. applicant and objectors and/or representors,) before reaching a decision or whether it has sufficient evidence to make a decision. If it is decided to hear the application at a public inquiry the representors will be invited to attend to present their case. If the decision can be made on the basis of the written evidence then NICLO staff will be responsible for advising all relevant parties of the outcome. Waiting for responses from the parties can take some time and it is therefore important that members of staff acting on behalf of the Department keep the parties appropriately and accurately informed of developments. It is important that parties do not go to unnecessary expense in addressing opposition where a decision on the validity of an objector or representor, for example, has already been taken.
- 88.** In cases where an applicant has had to re-advertise, the Department may determine that a representor should respond to the new advert particularly where there has been a change so that the Department can be satisfied that their

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opposition is being pursued. Similarly representors may be required to pursue their opposition by responding to correspondence sent on behalf of the Department. If they fail to do so the Department is entitled to infer that they have decided not to continue with their opposition.

89. Any submission to the Head of TRU should take account of the above and should seek to differentiate between the information which is valid as a representation and that which falls outside the scope allowed to representors and/or the Department's jurisdiction. Whilst assessing suitability under section 12 of the 2010 Act, the legislation does not restrict the Department to those considerations set out at section 20. The case law does indicate that where planning and highway authorities have chosen not to become involved, TRU should ignore planning or other objections in the absence of the appropriate authority. In Northern Ireland it is for the DFI Roads and Rivers Group to decide whether a public highway is suitable and/or safe for any particular use and TRU's jurisdiction is therefore limited.
90. Anyone who has made a representation should be advised in writing of the date, time and venue of the inquiry and be invited to attend. They must be given at least 21 days' notice and be asked to confirm in writing whether or not they will be attending.

Adverts

91. These Instructions are to be read in conjunction with the Guidance set out above at paragraphs 37-45. As a starting point advertisements placed in the local or regional newspapers, where planning applications for the locality are published, will be deemed to meet the requirements of section 10(2) or 17(3) of the 2010 Act. The circulation figures of newspapers indicate that a smaller percentage of the population buy local newspapers in urban areas than in rural areas and consequently where there is a concern that the statutory intention may not be met the matter is to be referred to the Head of TRU. However, the Department notes that advertisements in rural newspapers with an apparently low circulation may be as effective and an apparently high readership in urban areas. In some areas newspapers have ceased producing hard copy in favour of on-line publications to which residents now subscribe.
92. To ensure a consistent approach the Department instructs those assessing adverts as being compliant, or otherwise, with Sections 10(2) and 17(3) of the 2010 Act as follows:
 - for Sections 10(2) and 17(3) to be complied with, the Department must be satisfied that the advert is placed in 'one or more local newspapers circulating in the locality' and considers regional newspapers to meet that criteria
 - a list of accepted local / regional newspapers, and the locality within which they circulate, are listed at Annex 1.2 and applications relating to the associated post codes will be accepted as compliant
 - evidence including, but not restricted to, receipts that clearly show the publication carrying the advert as being available for purchase at a shop within the locality of the proposed operating centre, may be accepted by those assessing adverts as evidence of requirements being met

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- national newspapers do not meet the requirements of Sections 10(2) and 17(3), and applications relying on advertisements within those publications at Annex 1.3 are to be rejected as a result of the application being incomplete, unless there is time to re-advertise the application in a suitable newspaper within the prescribed period
- applications showing local or regional newspapers not listed at Annex 1.2, or where the operating centre address is not within the listed postcodes, should be referred to the Head or Deputy Head of TRU for consideration

Where an advertisement is considered as not being compliant with Sections 10(2) and 17(3) of the 2010 Act the application will be rejected as being incomplete, unless there is time to re-advertise the application in a suitable newspaper within the prescribed period.

- 93.** The effect of this is that whilst the Department cannot prescribe circulation levels, the statutory intention must still be met. The onus is on the applicant to demonstrate that they have advertised in a suitable newspaper which achieves the statutory intention thereby allowing local residents the opportunity to make representations. Evidence of newspaper publication should be in the form of the original full page of the newspaper containing the advertisement. In the case of digital applications electronic copies of that evidence can be uploaded; however, the Department and staff acting on their behalf reserve the right to request the original document. Applicants who take advantage of the digital service should retain the original advertisement and/or correspondence from the newspaper publisher, which confirms the date and text of the advert and that the advert has been paid for, throughout the period of the application.

Conditions

- 94.** The Department will consider all valid objections and representations received, as well as any other relevant information known about the proposed site and the applicant before making a decision on the application. On making a decision the Department may grant the application as applied for, with modifications, and/or attach conditions, or refuse the application. If the Department decides to grant the application, it can impose those conditions which it considers necessary to:
- prevent or reduce adverse environmental effects, and/or
 - prevent authorised vehicles causing danger to the public at any point where vehicles first join a public road on their way to and from an operating centre, and on any private approach road
- 95.** Conditions might cover:
- the number, type and size of authorised vehicles, including trailers, kept at the operating centre for maintenance or parking
 - the parking arrangements for authorised vehicles, including trailers, at or in the vicinity of the operating centre
 - the times when the centre may be used for maintenance or movement of authorised vehicles
 - how authorised vehicles enter and leave the operating centre

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- 96.** It is an offence to breach licence conditions and an operator faces criminal penalties in the Magistrates' Court if it does so. Conditions on the use of an operating centre can apply only to the licence holder concerned and the use of vehicles authorised under the licence. The Department cannot place restrictions on any vehicles which are visiting the site or are using it for other purposes. However, the site might be subject to wider restrictions, for example conditions imposed by local councils or planning authorities.

Complaints about existing operating centres

- 97.** In addition to the ability of the Department to review a licence where the operator is said to be operating outside the terms of that licence, the Department has the opportunity to review the suitability of an operating centre where:

- an operator applies to vary the use of an operating centre
- or at five yearly intervals, for example if local residents have made complaints within the last five years

- 98.** The Department has powers to take action at any time if a licence holder is operating outside the terms of their licence, for example by breaking any condition of use that appears on the operator's licence¹⁰⁰.

- 99.** Complaints against an operating centre can be received at any time. In general these are about the use of an existing operating centre or about breaches of any of the conditions or other restrictions under which a licence was issued. A complaint about an operating centre which is specified on a goods vehicle operator's licence can be on either environmental or road safety grounds.

- 100.** The Department requires complaints to be made in writing and should:

- state who the complaint is from
- state the grounds for complaint
- identify the operating centre concerned and, wherever possible, give the full address of the operating centre and the name(s) of the operator(s) using the operating centre to which the complaint relates, and if relevant, details of the vehicles and movements giving cause for concern

- 101.** Members of staff in the Department should acknowledge receipt of a complaint. The person making the complaint should be sent information about the complaints procedure and may be asked to complete a pro-forma in order to obtain sufficient information to supply to the Department. The relevant part of the form must be copied to the operator(s) concerned with an invitation to comment on the matters raised. This may also allow an opportunity for the operator to rectify any problems. The Department may allow the parties the opportunity to resolve any problems between themselves. Further complaints can be received from the same person at any time leading up to the review date. Complainants must be advised of the next review date and should be informed of the Department's decision at that time.

¹⁰⁰ See Practice Guidance and Instructions on the Principles of Decision making

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102. In the meantime complaints must be registered against the relevant operator's licence. If the complaint does not allege operation outside the terms of an operator's licence it must be filed and considered during the review stage. In the meantime if an operator applies to vary its licence in a way which would impact on the operating centre, the operator will have to advertise its intentions in the local press and complainants may make representations against the grant of the variation.

Review of operating centres

103. The Department may, but is not obliged, to conduct a review of an operating centre every five years commencing with the date when the goods vehicle operator's licence came into force. The review is not automatic and is at the Department's discretion. In reaching that decision, the Department should be referred to any complaints received against an operating centre in the preceding five years.

104. Members of staff should write to any person who has made a complaint against an operating centre during the review stage and in advance of the review date to ask for an update and request whether the complainant wishes to pursue their concerns.

105. The Department will consider the evidence summarised in a case submission and decide whether a review is justified. It is therefore important that members of staff ensure the accuracy of the submission and, by reference to the legislation and any relevant case law, their recommendation. They should communicate the decision to any complainant who has pursued their concerns.

106. In conducting a review of an operating centre the Department will consider:

- whether the operating centre continues to be suitable for the purposes for which the operator's licence allows it to be used
- on the basis that it is no longer suitable, whether conditions could be attached or changed which would make it suitable
- whether it is incapable of being made suitable by the imposition or changing of such conditions

107. As this suggests, on review of an operating centre the Department might attach conditions or vary existing conditions for environmental reasons, such as the times vehicles use the operating centre, or for non-environmental reasons, such as road safety. (The Department might also take account of any undertakings offered.) The Department can also remove an operating centre from a licence for environmental grounds, but only in limited circumstances on the grounds of the adverse effects of the parking of the operator's vehicles, or for non-environmental reasons.

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Schedule 1: Transfer of operating centre(s)

108. An applicant for a licence or an existing operator can apply to the Department under Schedule 1 to the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 to allow an operating centre to be transferred from one licence (the donor licence) to another (the donee licence). If the Department agrees to the request there is no need to advertise the application in a newspaper. It is also not possible for local residents or statutory objectors to object to the application.

Shared sites

109. Where an operating centre, within a larger site, is transferred, the donee is restricted to that part of the site previously approved as the operating centre for the donor. The donee cannot share the operating centre that has been transferred, and cannot share any part of the site beyond that operating centre. To do either would fall outside the remit of a transfer, and appropriate advertising would be required. The Head of TRU will accept a parking plan which clearly indicates where the vehicles on the applicant's licence will park and where vehicles belonging to other operators park. It must also make it clear that the parking spaces to be used by the applicant/operator are designated for their sole use. A failure to provide this type of plan or a failure to provide a sufficiently detailed plan means that the application must fail and the applicant/operator will have to advertise the application.

Process

110. In the first instance staff must check to see whether the requirements of Schedule 1 have been met and in particular:

- the operating centres to be transferred are all on the same licence(s), which must be a valid "live" licence(s)
- the operating centres to be transferred are not on any other licence. (Applications sometimes adopt a mixture; any that are not on the donor licence(s) must be the subject of a separate application.)
- the application must not exceed the current level of authority i.e. the same number or less of vehicles and, if applicable, trailers as are currently authorised at the operating centre under the donor licence(s)
- the accompanying application form only includes the operating centres for which a direction under Schedule 1 is sought
- that the donor licence(s) will be surrendered or the operating centre(s) in question will be removed from the donor licence(s) and that there is therefore an alternative
- that the application form is signed by both a person authorised on behalf of the applicant and a person authorised to sign on behalf of the donor

111. Staff must then check to see whether the operating centres have any conditions or undertakings attached to them. If they do, the applicant or operator must accept them in their entirety. Checks must be made to see whether the operating centres on the donor licence have any complaints recorded against them or if there is any history of environmental opposition either at the site in question or at neighbouring operating centres within such proximity to the operating centre

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that the Department might consider those matters to be relevant to determination of the application.

- 112.** Any issues raised with the operating centre prior to a request for transfer will be considered as part of the transfer request. Should the request be approved, the operating centre review date will be amended to reflect the five year review date for the donee licence holder.

Determining factors

- 113.** If all the administrative requirements above have been met, members of staff will submit the application to the Department for a decision. It is at the Department's discretion whether to issue a direction under Schedule 1. Where all criteria are met, the decision to approve Schedule 1 may be delegated to Team Leader level.
- 114.** A decision to refuse a Schedule 1 application must always be referred to the Head of TRU. They may not be minded to allow an application which does not require an advert (intended to alert local residents and allow them to voice any opposition) where representation(s), objection(s) or complaint(s) have been received against either the operating centre being applied for, or any other operating centre within the vicinity.
- 115.** Staff should write to the applicant/operator within seven days of the Department's decision. There will be one of three outcomes:
- the application has been accepted; or
 - Schedule 1 does not apply and the application must be advertised; or
 - the Department has declined to issue a direction under Schedule 1 and the application must be advertised
- 116.** Where the application to invoke the provisions of Schedule 1 is refused, the date of the application being received will be taken as the date of the Department's decision (i.e., the first point at which the application could be processed), so as to allow the applicant the opportunity to advertise notice of the application.

Address for service, correspondence and contact

- 117.** Operators are obliged to supply and keep up to date the correspondence address to be used by the Department. In the case of registered legal entities it might be possible to make further enquiries but the Department is under no obligation to do so. Operators who fail to meet this basic administrative requirement are responsible for any consequences.
- 118.** Members of staff are expected to keep a contemporaneous note of any substantive contact with an operator or applicant. Where there is an attempt to convey important information then members of staff should ask the operator or applicant to put this in writing and that request should be logged. Where changes come to light as a result of the self-service function or through other contact again this should be followed up in correspondence.
- 119.** When an operator fails to respond to a first letter a further letter should be sent by first class post with a copy by Recorded Delivery and by email, to all known

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addresses, including the address of establishment. If there is no reply, action forewarned in the latter letter may then be taken. In order to confirm that a notice has been properly served details of the delivery and signature can be obtained through the postal system used.

- 120.** It is desirable to give operators as much notice of public inquiries as possible. In some cases call-up letters may be sent so as to be received by the recipients 35 days and no later than 28 days before the scheduled date for the public inquiry, and in complex cases as much notice as possible should be given. However, it is recognised that this is not always possible but it is incumbent on the Department's staff to ensure that at least the statutory 21 day notice period is observed. The call-up letter should be sent by first class post with a copy by recorded delivery and email. The letter should detail the reasons for calling the public inquiry, the evidence that the Department will consider and any further information that the Department requires from the operator. If the operator does not respond and does not attend the public inquiry it will be for the Department to determine whether the inquiry can proceed but operators should expect the Department to proceed on the basis that there was good service if the correspondence was sent by the following means:

Type of letter	Delivery method
Request explanation letter (REL)	Email or second class post if not signed up to receive digital communications
Warning letter / NFA letter	Email or second class post if not signed up to receive digital communications
Propose to revoke (PTR) letter	Recorded delivery to all known addresses and email
Decision to revoke a licence under PTR procedures	Recorded delivery to all known addresses and email
STL interview call up letters	First class post to correspondence address and email
STL interview decision letters	First class post to correspondence address and email
Preliminary hearing call up letters	First class post to correspondence address and email
Preliminary hearing decision letters	First class post to correspondence address and email
Operator and transport manager call up letters	Recorded delivery and email
Briefs to operator/transport manager	Recorded delivery
Supplementary letters	Email (or First class post where additional documents are required)
Public Inquiry decision letters	Recorded delivery
38/36 statements of evidence	First class post unless email service is available
TRU general correspondence	First class post or email
NICLO general correspondence	Second class post or email
Driver call-up letters	First class post
Driver decision letters	First class post
CDs sent to AVR, Upper Tribunal or any third parties	Royal Mail Special Delivery
Upper Tribunal appeal papers	Royal Mail Special Delivery
Upper Tribunal general correspondence	First class post or email

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121. Each legal entity invited to an inquiry should receive a separate letter. The letter, however, must clearly detail which licences are being considered by the Department.
122. The letter to a limited company should be addressed to 'The Director(s)'. In the case of a partnership the letter must be addressed to all the named partners on the letter. It is not necessary to send separate letters to each partner as partners have a fiduciary duty to one another meaning that they should advise each partner of the contents.
123. Where a public inquiry is heard on environmental grounds a letter should be sent to each valid representor and objector inviting them to attend the inquiry. The letter should include all relevant evidence that the Department intends to consider at the hearing.
124. The general practice is to send the call up letter by recorded delivery and first class post, the briefs are sent by recorded delivery and all other correspondence is sent by first class post. Save in exceptional circumstances and where authorised by the Department, all evidence should also be sent to the proper address rather than the nominated representative. It is for the relevant party to make arrangements for that representative to receive copies.

Use of advisers' contact addresses for operators

125. In the past some transport consultants have requested that all correspondence relating to their client operators be sent to the consultant's address and as a consequence the Department may not have a correct postal address for correspondence for an operator or a transport manager. As a result it may be that an operator or transport manager will not receive essential correspondence such as a calling-in letter or a warning letter from the Department. This former practice also does not sit well with the requirement for standard licence holders to have a stable establishment in accordance with Regulation (EC) 1071/2009.
126. This practice is therefore no longer acceptable and, regardless of whether an operator (or applicant) is legally represented or represented by a transport consultant, the operator's (applicant's) own correspondence address should always be obtained and recorded to enable the operator (applicant) to be contacted direct at that address. This will minimise the possibility of an operator (applicant) not receiving essential correspondence, particularly where a solicitor or transport consultant is no longer instructed by the operator (applicant). Where existing advisers still use their own business address as an operator's sole correspondence address, they should be required to supply a separate correspondence address for the operator to NICLO within a given deadline.
127. A practice had developed in GB whereby some advisers who represent applicants for operator licences or existing operators request that all papers for a hearing be sent to the office address of the adviser; this practice has been reviewed. Where a request is received from an adviser who is not a practicing solicitor to send all correspondence to them, copies of correspondence will only be sent to the adviser upon written confirmation from the operator/applicant that the adviser is instructed to act on their behalf. Where they request that

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correspondence be sent to their advisers (whether practicing solicitors or not) duplicate copies of correspondence will not be sent directly to the operator. It is for the operator to ensure that representatives have the required information.

Use of PO boxes for correspondence

128. The use of Post Office (PO) boxes is now excluded from the application forms. A PO Box can never be a suitable address to meet the requirement on a standard licence for a stable establishment. In the exceptional event that an application is made for an operator to have a PO Box as a correspondence address this must be referred to the Head of TRU.

Transport Regulation Unit

01 May 2020

ANNEX 1: ACCEPTABLE NEWSPAPERS FOR ADVERTS

- 1.1 A representation opposing an application or variation application must be made in the period of 21 days beginning with the date on which notice of the application is published in one or more local (or regional) newspapers circulating in the locality.
- 1.2 Northern Ireland has a wide range of local newspapers and three regional newspapers. Applications showing publication in one of these listed newspapers can be accepted by the relevant staff on provision that the Operating Centre address post code is within the locality of that newspaper

Belfast		BT1 - BT17, BT29	
Andersonstown News	Belfast News	North Belfast News	South Belfast News
The Belfast Telegraph			
Co. Antrim		BT5, BT27-29, BT36-44, BT53-54, BT56-58	
Antrim Guardian	Ballycastle Chronicle	Ballymena Guardian	Ballymoney Chronicle
Newtownabbey Times	Ulster Star	The Belfast Telegraph	
Co. Armagh		BT35, BT60-67	
Armagh Observer	Lurgan Mail	Portadown Times	Ulster Gazette
Newry Reporter	The Banbridge Chronicle	The Belfast Telegraph	
Co. Down		BT4, BT18-27, BT30-34	
County Down Outlook	County Down Spectator	Down Recorder	The Mourne Observer
Newry Reporter	Newtownards Chronicle	The Banbridge Chronicle	The Belfast Telegraph
Co. Fermanagh		BT74, BT92-94	
Fermanagh Herald	Fermanagh News	The impartial Reporter	The Belfast Telegraph
Co L'Derry		BT28, BT45-49, BT51-52 BT55	
Coleraine Chronicle	The Coleraine Leader	County Derry Post	Derry Journal
Derry News	Limavady Chronicle	Londonderry Sentinel	Mid Ulster Mail
Mid Ulster Observer	Northern Constitution	Limavady Northern Constitution	The Belfast Telegraph
Co Tyrone		BT68-71, BT75-82	
Mid Ulster Mail	Mid Ulster Observer	Tyrone Constitution	Tyrone Courier
Strabane Chronicle	Strabane Weekly News and Tyrone & Donegal Reporter	Tyrone Herald & Ulster Herald	The Belfast Telegraph

Advertisements published in newspapers not listed, or where the operating centre post code differs from those listed, should be referred to Head or Deputy Head of TRU for further consideration.

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- 1.3 The United Kingdom has 11 national newspapers, and in applications where an advertisement is published exclusively within these papers is to be rejected as being incomplete, unless there is time to re-advertise the application in a suitable newspaper within the prescribed period.

Daily Express	Daily Mail	Daily Mirror	The Daily Telegraph
The Guardian	The independent	London Evening Standard	Metro
The Observer	The Sun	The Times	

- 1.4 To ensure that people in the locality of the proposed operating centre are not prejudiced by advertisements being published in a local / regional paper not normally circulated within the local community, advertisements in the following publications should be referred to TRU for further consideration.

The Irish News	The Newsletter		
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- 1.5 The list will remain under review by the Department and updated on a periodic basis.

ANNEX 2: EU LEGISLATION

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 3 - Requirements for engagement in the occupation of road transport operator

(a) have an effective and stable establishment in a Member State;

Article 5 - Conditions relating to the requirement of establishment

In order to satisfy the requirement laid down in Article 3(1)(a), an undertaking shall, in the Member State concerned:

(a) have an establishment situated in that Member State with premises in which it keeps its core business documents, in particular its accounting documents, personnel management documents, documents containing data relating to driving time and rest and any other document to which the competent authority must have access in order to verify compliance with the conditions laid down in this Regulation. Member States may require that establishments on their territory also have other documents available at their premises at any time

(b) once an authorisation is granted, have at its disposal one or more vehicles which are registered or otherwise put into circulation in conformity with the legislation of that Member State, whether those vehicles are wholly owned or, for example, held under a hire-purchase agreement or a hire or leasing contract

(c) conduct effectively and continuously with the necessary administrative equipment its operations concerning the vehicles mentioned in point (b) and with the appropriate technical equipment and facilities at an operating centre situated in that Member State

Article 13 - Procedure for the suspension and withdrawal of authorisations

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:

(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

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.

DOCUMENT CONTROL HISTORY

Version 1.0 (published 01/10/2019)

Version 1.1 (published 01/05/2020)

- Paragraph 11: Addition of link to Applications & Decisions publication page
- Paragraph 21: Amendment of function from a statutory duty (which it is not), to a policy which keeps processes proportionate and aligned to the approach taken in GB
- Paragraph 29: Clarification on transfer of operating centres within shared sites
- Paragraph 96: Removal of reference to Transport for London Code of Practice
- Paragraph 109: Clarification on transfer of operating centres within shared sites
- Paragraph 112: Clarification on impact a transfer will have on the review date of an operating centre

Version 1.1 (published 01/05/2020)

Version 1.2 (published 28/07/2020)

- Paragraph 92: Authorisation for staff assessing adverts to use evidence, including, but not restricted to, receipts that clearly show the publication carrying the advert as being available for purchase at a shop within the locality of the proposed operating centre.
- Annex 1: Belfast Telegraph added as acceptable for all Postcodes in NI