



Department for
Infrastructure

An Roinn

Bonneagair

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Practice Guidance Document No.7

DELEGATION OF AUTHORITY ***(THE DELEGATION OF FUNCTIONS TO STAFF)***

Commencement **01/10/2019**

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GUIDANCE

1. The Department issues the following practice guidance as to the way in which it believes that it should interpret the law in relation to the delegation of its functions to staff in the Northern Ireland Central Licensing Office (NICLO) and the Transport Regulation Unit (TRU).
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 TRU on behalf of the Department for Infrastructure (“the Department”).
3. Operator licences are issued by the Department, but it may choose, as a matter of practice, to delegate certain routine decisions to members of the TRU and NICLO staff acting on its behalf. The Head of TRU might also delegate some of their functions to the Deputy Head of TRU or, in relation to hearings and public inquires, to nominated presiding officers.

Delegation

4. Section 28 of the Northern Ireland Act 1998 allows arrangements to be made between— any department of the Government of the United Kingdom or any public body, or holder of a public office, in the United Kingdom; and (b) any Northern Ireland department, for any functions of one of them to be discharged by, or by officers of, the other.
5. Subject to appropriate process, the Head of TRU may authorise an officer to exercise any of its functions and to that extent will be treated as if those functions had been carried out by the Head of TRU. For the purposes of this document any reference to the Head of TRU should be taken as meaning the post holder, or any person, or undertaking, discharging those functions under delegated authority.
6. The Department has delegated its functions in appointing DVSA’s Northern Ireland Central Licensing Office (NICLO) staff to act as *officers and servants of the Department*.
7. The Human Rights Act 1998 guarantees the rights of individuals. Those rights cannot be interfered with, without the proper process of law. It is therefore important that all decisions, however, trivial they may seem, are considered against this background and any doubts must be referred to the Head of TRU. NICLO staff acting on behalf of the Department are not permitted to take any decision which might be deemed to be judicial in nature and which should properly be taken by the officer exercising their power as the Department’s official in a tribunal, nor any decision which might affect a person’s rights and the limitations set out in section 71(1)(a) and (b) of the Human Rights Act 1998 apply.
8. The Assembly has conferred powers directly on the Department to execute its functions under the relevant legislation. Those functions relying on personal qualifications can only be delegated to equivalent officers. Whilst a member of staff may be described in an instrument of delegation as a proper and appropriate

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agent; that person does not become the proper and appropriate person⁴ as their actions under a delegation are those of the Department. Delegations will need to be updated with each new post holder.

9. Instructions cannot be used to dictate the meaning and operation of any enactment or instrument as this would suborn the responsibility of the judiciary and would risk inconsistency with case law⁵. Any Instructions issued regarding the manner in which members of NICLO or TRU staff will carry out functions on behalf of the Department are subject to these legal principles. The delegations described in the attached annexes exist at the discretion of the Department whose functions are exercised under the delegation.
10. The effect of a delegation is that the authorised member of staff may take decisions under the delegated powers. The attached Annex provides suggested levels of delegation. Delegations must be explicit and specific. Whilst the Upper Tribunal has suggested that there is no general principle preventing staff in the Department from deciding to take no further action in respect of a matter reported to them, unless there is some clear restriction imposed on them⁶, this does not fully reflect the public law and the different approach advocated by the Upper Tribunal has not been distinguished⁷. In any event, the Upper Tribunal was not asked to and so did not consider the relevant case law on delegation and the doctrine of legitimate expectation⁸. For the avoidance of any doubt on the part of applicants or operators, staff acting on behalf of the Department or others, this document makes it explicitly clear that any delegation must be in writing and not based on a misunderstanding of any custom or practice, which might have developed amongst staff⁹. It is open to the Department to conclude that what purports to be an operator's licence is in fact void¹⁰.
11. If a member of staff exceeds an explicit and clear delegation then their actions may be deemed to be not those of the Department and as a matter of public law the Department may not be considered liable for any prejudice/liabilities arising. Where a decision is not listed in the delegation it must be referred to the Head of TRU for direction. In particular any decision that would have the effect of revoking or suspending or curtailing a licence of an operator, or limiting the use of a Certificate of Professional Competence by a transport manager, must be referred to the Head of TRU for consideration but the principle extends to information obtained by the Department as a data controller, which cannot be disclosed to

⁴ R (on the application of the National Association of Health Stores & Another) v Department of Health [2005] EWCA 154

⁵ Al-Le Logistics Limited and Others [2010] EWHC 134 (Admin)

⁶ 2011/043 D A Lewis UPVC Installations Ltd & Another,

⁷ 2005/239 JR Williams t/a JRW Services

⁸ i.e. where a decision-maker misunderstands the extent of their legal powers and offers to an applicant a benefit for which the applicant is not qualified under statute; a policy or procedure has been operated in such a way in the past so person can presume unless corrected that it will continue in the future; the decision-maker has promised a benefit and it would be unfair to break that promise, even if there are public interest grounds. In those circumstances a court may look at: Were the words or conduct ("promise/representation") which gave rise to the expectation clear and unequivocal? Did the person promising the benefit have legal power to grant it (or ultra vires)? Who made the promise and how many people stood to benefit by it? Did the person(s) to whom the promise was made take action in reliance upon it which has prejudiced them?

⁹ See Practice Guidance and Instructions on Introduction including how to use the Practice Guidance and Instructions on and 2015/063 Mr & Mrs V Smith which appears to contradict the earlier decision in Aluminium Shapes and allows for the prospect of a licence or condition being treated as void ab initio.

¹⁰ 2013/073 Ghulam Qadir Shah illustrates the difficulty in following 2012/200 Aluminium Shapes Ltd – in which the Upper Tribunal expressed an opposite opinion. However, it was not asked to consider the application of section 36 of the Goods legislation (GB) (the equivalent of section 49A of the PSV legislation) for instance.

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any party without explicit authority. That is not to say that every referral requires a formal written submission. However, there is no authority to delay an explicit instruction from the Head of the TRU, where additional time is required the case must be resubmitted.

- 12.** NICLO staff will be aware of the expectation on them to engage in active case management¹¹ by deciding promptly which issues need referring to the Head of TRU and disposing summarily of the others. Equally, the Head of TRU will be aware of the expectation on them to engage in active case management by deciding promptly which issues need a full hearing and disposing summarily of the others. The Department recognises the real benefit of applications being considered in a timely manner and therefore not giving rise to potential allegations of unfair treatment or conflicts with European Convention on Human Rights, It is therefore equally important that staff members acting on its behalf also adopt this approach. Issues such as minor changes or clarification of relevant legislative provisions should be dealt with by email or in person, with a record of any decision made. Team Leaders and Senior Team Leaders are deemed competent to make amendments by way of clarification, such as ensuring that all matters at issue are covered by the listed legislation.
- 13.** Staff cannot exercise delegated functions unless the individual has been specifically authorised in writing by the Department and only to the extent indicated in that authorisation. Annex 1 therefore provides a suggested instrument of delegation. The Department will only grant delegations to named caseworkers, Team Leaders and Senior Team Leaders and other named staff, who are designated officers within NICLO. As indicated above, the Department will wish to be satisfied as to the suitability of a member of staff before delegating functions, taking into account their relevant experience and training. Annex 2 provides a suggested starting point for delegations but the Department may choose to delegate further functions. The Department may also remove delegations as they deem appropriate. The Head of TRU is required to keep and maintain a Delegation Register, which is to be updated every six months and to ensure that the necessary audits take place.
- 14.** Relevant members of staff may suggest draft undertakings and conditions but the decision on whether to impose those restrictions remains with the Head of TRU or those carrying delegated authority. Annex 3 provides guidance on the drafting of conditions and undertakings.
- 15.** In addition to the above, Annex 5 sets out guidance for TRU staff dealing with referrals from NICLO, DVA and other sources.

Transport Regulation Unit

01 May 2020

¹¹ See Practice Guidance and Instructions on Case Management

ANNEX 1 – INSTRUMENT OF DELEGATION



I hereby confirm that

[NAME OF MEMBER OF STAFF]

Who, having been nominated as an officer and servant of the Department, is authorised by me under the provisions of Section 28 of the Northern Ireland Act 1998 to act and make decisions in accordance with the guidelines set out in Practice Guidance 7 - Delegation of Authority - up to and including the level of until such time as I withdraw all or any part of the delegation.

Signed.....

Date

Name

Head of DfI Transport Regulation Unit

ANNEX 2 – SUGGESTED DELEGATIONS (REVISED OCT'19)

Authority delegated to the minimum grade, and those above that grade, as per the following key:

HTRU	Head of TRU	Grade 7	G7
PO	Presiding Officer	TRU call-off panel	N/A
DHTRU	Deputy Head of TRU	Deputy Principal	DP
STL	Senior Team Leader	Higher Executive Officer	HEO/EOI
TL	Team Leader	Executive Officer	EO / EOII
C	Caseworker or Clerk	Administrative Officer	AO

1.	Matters which Can be not be delegated	Minimum Grade
a.	Development and publication of the Practice Guidance Documents	HTRU
2.	Unopposed Applications	
a.	Grant of licence and variation (chargeable) applications without objections or representations which meet requirements on establishment, finance, professional competence, maintenance and repute and where there are no relevant recorded convictions ¹² or concerns about the applicant or the TM and there is no history (i.e. previous representations or objections or complaints) logged against the operating centre and the applicant does not seek to vary or remove licence conditions	C
b.	Grant of licence and variation (chargeable) applications where road transport offences have been committed, excluding offences relating to driver's hours of work or rest, weights or dimensions of commercial vehicles, road or safety or the protection of the environment, any other offence concerning liability, or any corresponding offence	TL
c.	Grant of interim authority where all the following are satisfied: <ul style="list-style-type: none"> • all mandatory requirements such as establishment, repute, financial standing and professional competence are met • the period for making representations against the proposed operating centre has expired and no representations have been received • the operating centre is already listed on another licence and there have been no recorded concerns or conditions imposed OR, if the operating centre is a new site, it is located in an established industrial area or remote rural area that is not in close proximity to local residents 	C

¹² See Practice Guidance and Instructions on Good Repute and Fitness with regard to spent convictions

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d.	Grant of interim authority where all the following are satisfied: <ul style="list-style-type: none"> • all mandatory requirements such as establishment, repute, financial standing and professional competence are met • the period for making representations / objections against the proposed operating centre has not expired but no representations have been received • the operating centre is already listed on another licence and there have been no recorded concerns or conditions imposed OR, if the operating centre is a new site, it is located in an established industrial area or remote rural area that is not in close proximity to local residents 	TL
e.	Proposal and subsequent grant of applications subject to conditions and/or undertakings agreed by all relevant parties as deemed appropriate. There must be no attempt to coerce parties into acceptance of proposed conditions or undertakings. If there is any doubt, or if this method does not seem suitable, the case is to be referred to the Head or Deputy Head of TRU as early as possible	TL
3.	Opposed Applications	
a.	Proposal and subsequent grant of applications subject to conditions and/or undertakings agreed by all relevant parties as deemed appropriate. There must be no attempt to coerce parties into acceptance of proposed conditions or undertakings. If there is any doubt, or if this method does not seem suitable, the case is to be referred to the Head or Deputy Head of TRU as early as possible	TL
4.	Other Matters	
a.	Refusal of new applications or major variations, which are incomplete	TL
b.	Applications to increase the vehicle/trailer authorisation in line with the vehicle/trailer authorisation across all operating centres or to change operating centre address located in the same established industrial area and using the same means of access/egress, subject to a satisfactory compliance record check, no other compliance issues, the availability of finance requirements and that professional competence can be met	C
c.	Agreement that an application shall not be treated as withdrawn when the prescribed payment date falls on a day when the office is closed and the fees are received on the next working day	TL
d.	Direction that termination of the licence for non-payment of fees by the fee due date may be disregarded for “exceptional circumstances”, provided the prescribed date falls on a day when the office is closed and when the fee is received on the next working day	TL

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e	Continuation of licence on the death of “actual holder” up to a period of six months where the licence is not subject to compliance proceedings (e.g. public inquiry or a proposal to revoke) where the request is received within three months of the date of death	TL
f.	Propose to revoke licence on liquidation of a company or material change affecting the licence holder. Final revocation to be determined by the Head or Deputy Head of the TRU	TL
g.	Decisions regarding satisfaction of requirement regarding qualifications for professional competence	STL
h.	Acceptance of the surrender of a licence where there is no basis for regulatory consideration	TL
i.	Acceptance of validity of advertisements if the wording is marginally incorrect provided that no person’s interests are likely to have been prejudiced	TL
h.	Agreement to Schedule 1 transfers provided there are no outstanding compliance issues, and no known complaints. There must be full agreement to acceptance by the applicant/operator of any existing conditions and/or undertakings relating to the use of the site.	TL ¹³
5.	Delegations relating to decisions made by staff in the Department	
a.	Decision to issue a warning letter for a regulatory breach	TL
b.	Decision to take no further action for a regulatory breach	TL
c.	Sending a propose to revoke letter on liquidation of a company, bankruptcy of an individual licence holder, dissolution of a partnership or change of entity. Final revocation to be determined by the Head or Deputy Head of TRU	TL
d.	Impounding – formal letter to DVA advising that no application for return has been received	TL
e.	Propose and accept regulatory undertakings, if deemed appropriate. Removal of a completed undertaking	TL
f.	Minor clarification of legal provisions for public inquiry	TL
g.	Completion of section 9 and 36/38 statements	C
6.	Regulatory Decisions	
a.	Disciplinary/regulatory directions and decisions	DHTRU
b.	Decision to adjourn a public inquiry	PO
c.	Decisions on stay applications	PO
d.	Acceptance of surrender of licences where there are outstanding compliance issues	PO
e.	Decisions on impounded vehicles	PO
f.	Decision to review an operating centre	DHTRU
g.	Grant of any Period of Grace	DHTRU
h.	Propose and accept regulatory undertakings, if deemed appropriate. Removal of a completed undertaking.	DHTRU
i.	Continuation of licence on bankruptcy etc. (Regulation 29) ¹⁴	PO

¹³ See Practice Guidance and Instructions on Case Management

¹⁴ See Practice Guidance and Instructions on Legal Entities

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7.	Inquiries and Hearings	
a.	Call, preside over, and make decisions from an In Chamber Hearing, in line with the limits contained within Practice Guidance 9 – The Principles of Decision Making and the Concept of Proportionality.	DHTRU
b.	Call, preside over, and make decisions from a preliminary hearing, in line with the limits contained within Practice Guidance 9 – The Principles of Decision Making and the Concept of Proportionality.	PO
c.	Call, preside over, and make decisions arising from a public inquiry, in line with the limits contained within Practice Guidance 9 – The Principles of Decision Making and the Concept of Proportionality.	PO
c.	Call, preside over, and make decisions arising from detention hearings, in line with the limits contained within Practice Guidance 6 – Detention.	PO

ANNEX 3 – FORMULATION OF CONDITIONS & UNDERTAKINGS

1. Guidance on format of conditions

- 1.1 Conditions must be:
 - 1.1.1 lawful and reasonable
 - 1.1.2 unambiguous
 - 1.1.3 capable of being monitored and enforced

2. Road safety conditions/undertakings

- 2.1 Must prevent vehicles authorised to be used under a licence from causing danger to the public:
 - at any point where vehicles first join or leave the public road when leaving or returning to the operating centre
 - on any road (other than a public road) along which vehicles are driven between such a point and the operating centre

3. Examples of road safety conditions/undertakings

- 3.1 Authorised vehicles (including trailers) shall leave the operating centre by executing a right turn on to [*Name of*] Road and shall enter by executing a left turn from that road.
- 3.2 Authorised vehicles shall enter and leave the operating centre in forward gear.

4. Environmental conditions

- 4.1 Environmental conditions must prevent or minimise adverse effects on owners or occupiers of land in the vicinity of the place used or to be used as the operating centre.
- 4.2 Conditions may relate to:
 - 4.2.1 number, type and size of motor vehicles or trailers
 - 4.2.2 vehicle and trailer parking arrangements at or in the vicinity of any such centre
 - 4.2.3 the hours at which operations (including maintenance, loading and unloading) may be carried out

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5. Examples of environmental conditions

- 5.1 Authorised vehicles shall not exceed 7½ tonnes gross vehicle weight.
- 5.2 The engines of authorised vehicles shall not operate for more than five minutes before the authorised vehicles leave the operating centre.
- 5.3 There shall be no maintenance at the operating centre.
- 5.4 Authorised vehicles shall be parked within the area indicated on the plan attached to the licence.
- 5.5 The hours of movement of the authorised vehicles at, into or out of the operating centre shall be confined to 07:00 to 19:00 Mondays to Fridays.

6. Reasons for imposing conditions/undertakings

- 6.1 The reasons for the attachment of licence conditions or acceptance of undertakings must always be clearly stated.

7. Important exception

- 7.1 Where novel forms of conditions or undertakings are agreed between the parties, the Head of TRU should be consulted to confirm the legality and appropriateness of what is proposed.

8. Removal of variation conditions

- 8.1 Conditions or undertakings imposed at public inquiry or by the Head or Deputy Head of TRU personally, in-chambers, may only be amended or removed by the Head or Deputy Head of TRU, or a Presiding Officer.
- 8.2 Applications to vary or remove conditions or undertakings which are contested may be determined only by the Head or Deputy Head of TRU after the public inquiry as appropriate, or a Presiding Officer.
- 8.3 Otherwise conditions or undertakings may be removed or varied subject to either:
 - 8.3.1 written agreement of all parties originally involved
 - 8.3.2 lack of response to advertisement or Applications and Decisions publication
 - 8.3.3 change in the circumstances which caused the original imposition of the conditions whether road safety or environmental

9. Reasons for removing conditions/undertakings

- 9.1 Reasons for deleting or changing undertakings or conditions must always be given.

ANNEX 4 – AUDIT PROCESS FOR STAFF WORKING UNDER DELEGATED AUTHORITY FROM THE DEPARTMENT

Background

1. The legal background to delegations is explained in the Practice Guidance above. The delegation of functions requires proper oversight and there is, therefore, a clear need for a record to be kept of the process of auditing the way in which NICLO staff exercise their delegated functions, so that all who deal with the Department and its staff can have confidence in the licensing system. These processes will also ensure that the Head of TRU has confidence in any staff member who carries out work on their behalf under delegated authority. NICLO staff are specifically referred to the Practice Guidance, which explains the basis of those delegations.
2. The process defined below will provide evidence of a transparent audit system and will include audits of all staff working at all levels within NICLO so as to provide the Head of TRU with assurance that the delegation system is working properly.
3. Those carrying out the audits are reminded that the process set out below defines the minimum requirements and that, where there are concerns about a particular member of staff that result in further training, the audit frequency and type should be increased accordingly.
4. A distinction can also be drawn between those members of staff (at all levels) who have a number of years' experience in NICLO and a consequent breadth of expertise (referred to as established staff) and those members of staff who are either newly recruited or who have relatively little experience in their new post (referred to as new staff). It will therefore be for those carrying out the audits to ensure that proper training and auditing takes place with particular regard to new staff.
5. Similarly, where the Department has legitimate concerns about an individual member of staff, they must raise it with the Head of CLO at the earliest opportunity so that steps can be taken to address those concerns. All staff are reminded that the final decision on whether to remove any delegation granted to a member of staff lies with the Department and that any proposals by NICLO to remove any delegations must be fully discussed with the Head or Deputy Head of TRU who will make the final decision.

Process

6. The Team Leader will conduct audit checks at least every calendar month of no less than 10% of all decisions made by established caseworkers (AO level) under delegated authority. A written record of those audit checks will be kept and will be provided to the Head of TRU upon request.

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7. The Senior Team Leader (HEO level) will conduct audit checks at least every two calendar months of no less than 5% of all decisions made by the established team leader (EO level) under delegated authority. A written record of those audit checks will be kept and will be provided to the Head of TRU upon request.

8. The Senior Executive Officer will conduct audit checks at least every three calendar months of no less than 5% of all decisions made by the established senior team leader under delegated authority. A written record of those audit checks will be kept and will be provided to the Head of TRU upon request.

9. The starting point for the audit of “new caseworkers” (AO level) will be for the team leader to conduct audit checks on a reducing scale in respect of conducting an audit of 100% of their work for the first month after grant of delegation, 75% of their work for the second month after grant, 50% of their work for the third month after grant, 25% of their work for the fourth month after grant and 10% of the work thereafter. A written record of those audit checks will be kept and will be provided to the Head of TRU upon request. If the team leader determines that the caseworker (AO level) is progressing quickly enough to depart from this starting point they are required to record that decision with reasons.

10. The Senior Team Leader will conduct audit checks on a reducing scale in respect of a “new team leader” (EO level) conducting an audit of 100% of their work for the first month after grant of delegation, 75% of their work for the second month after grant, 50% of their work for the third month after grant, 25% of their work for the fourth month after grant and 10% of the work thereafter. As the team leader (EO level) post is key to the audit of other members of staff there will be scope for reducing the timescale for these audit checks. A written record of those audit checks will be kept and will be provided to the Head of TRU upon request.

11. The Senior executive officer will conduct audit checks in respect of a “new senior team leader” (HEO level) at least every three calendar months of decisions made under delegated authority. They will also conduct audit checks regarding any decision made at any level and not previously audited and a cross-check of decisions that have been audited. A written record of those audit checks will be kept and will be provided to the Head of TRU upon request. To ensure a consistent approach the audit record will include comments as against the relevant headings below.

12. Where minor errors are found during the audit it will be sufficient for the relevant line manager to deal with that matter informally with the member of staff by whatever means they consider appropriate e.g. further training or mentoring or auditing.

13. Where major errors are found with a member of staff’s work as a result of the audit the relevant line manager will bring the matter to the attention of the Head of TRU as soon as possible and will discuss with them what steps are in place to deal with the matter appropriately. It will be for the line manager to deal with any HR matters arising as a result but it will be a matter solely for the Head of TRU as to whether to retain or remove the delegation.

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14. The Head of CLO will keep a register of those instances where members of staff are found to have acted either outside of their delegation or “ultra vires” and will provide a copy of that register to the Head of TRU on a quarterly basis.

Matters to be included in the audit template – licensing staff

- 1) Caseworker/team leader/senior team leader
- 2) Date of check
- 3) Licence Number
- 4) Operator Name – of the entity and of any trading name
- 5) Date input accuracy
- 6) Searches
- 7) Advert
- 8) Maintenance arrangements
- 9) Correspondence
- 10) Transport manager qualifications
- 11) Transport manager declaration
- 12) Convictions
- 13) Finances
- 14) Conditions/undertakings
- 15) Submission
- 16) Intelligence check
- 17) Publication
- 18) Delegation
- 19) Any additional comments

Matters to be included in the audit template – compliance staff

- 1) Caseworker/team leader/senior team leader/DHTU/PO
- 2) Date of check
- 3) Licence Number
- 4) Operator Name – of the entity and of any trading name
- 5) Date input accuracy
- 6) Searches
- 7) Maintenance arrangements
- 8) Correspondence
- 9) Transport manager declaration
- 10) Convictions
- 11) Finances
- 12) Conditions/undertakings
- 13) Submission – to include cross check that the call up letter (where applicable) refers to the correct legislation
- 14) Intelligence check
- 15) Call up letter – where appropriate
- 16) Warning letter – where appropriate
- 17) Publication
- 18) Delegation
- 19) Any additional comments

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STANDARD TEMPLATE TO CONFIRM COMPETENCY TO EXERCISE DELEGATED FUNCTIONS

From:

To:

Date:

I am writing to recommend that you award [*Name*] caseworker/team leader/senior team leader delegated authority to cover [*Functions*] (2a etc.) for Northern Ireland.

[*Name*] has been working as a [*Role*] since [*Date*] and they undertook the mandatory operator licensing training on [*Date*].

[*Name*] has processed approximately [*Count*] Northern Ireland applications. Within the [*dates*] period checks showed [*Count*] (e.g. very minor errors in relation to [*Functions*]).

I am now satisfied that they have the necessary experience and expertise to enable grant of delegated authority at the level of caseworker/team leader/senior team leader.

They have also observed [*Count*] public inquiries.

The quality of their work is [*quantify*] and their application processing accurate and I would recommend that [*Name*] is awarded delegated granting rights with a reducing audit. If you content to award delegated grant I recommend you do so with effect from [*Date*].

ANNEX 5 - DECISION MAKING PROCESSES FOR TRU STAFF

The purpose of this document is to provide a more detailed description of the type of casework, and at what level, the Head of TRU may agree to delegate decisions within the TRU. All members of staff working within the TRU must read and fully understand this document.

1. Guidance on exercise of delegations

1.1 Decisions must be:

- a) lawful and reasonable
- b) exercised within strict parameters in accordance with the Department's Practice Guidance and Instruction documents and in particular the Guidance on Delegations and Annex 3 of the Department's Guidance and Instructions on the Principles of decision making
- c) reasoned and recorded

2. Guidance on making recommendations and decisions for operator licence failings

2.1 Staff should be aware of the leading case law and principles. Practice Guidance Document No.9 (Decision Making and Proportionality) indicates the regulatory starting points. For action to be taken under delegation it must fall within the areas indicated on Practice Document 9, Annex 4, as **Low**.

However, the leading cases set questions which might be paraphrased as: how likely is it that this operator will, in future, operate in compliance with the operator licensing regime? The following offers further guidance as to how staff acting under delegations should reach a qualitative assessment:

2.2 Recommendations for a formal 'in-chambers' hearing (ICH), preliminary hearing or public inquiry can only be made by either the Deputy or Head of TRU. Each recommendation must include the rationale for the recommendation. Referrals for ICH should be passed to the Deputy Head of TRU, with preliminary hearing or a public inquiry recommendations passed to the Head of TRU for consideration and action.

2.3 A decision to hold an ICH must be documented and proportionate given the issues being considered. If any of the infringements include MSI's, fraud, assault of a government official or serious infringements as set out in Article 6(1) of Regulation (EC) 1071/2009, this must be escalated to the Head or Deputy Head of TRU for consideration and a reasoned decision of what is the appropriate forum to hear the case.

2.4 The following matters should be referred to the Head or Deputy Head of TRU:

- a) where numerous different issues of non-compliance are identified and include Most Serious Infringements (MSIs) and/or Very Serious Infringements (VSIs)

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- b) where the operator and/or the transport manager have been subject to a previous public inquiry
- c) where previous warning letters have been issued in the last five years
- d) where any prohibition notice issued involves failings in the braking system, steering, loose wheel nuts or other safety critical components or one which is 'S' marked (the 'S' marking indicating a serious failure in the operator's maintenance regime)
- e) where there is evidence of fraud or intentional deception, including the use of any device to interfere with the tachograph recording equipment, such as, magnets

2.5 No delegation exists for TRU staff (other than the Head or Deputy Head of TRU) to make a decision on any new conviction or MSI brought to the attention of the TRU.

2.6 No delegation exists for TRU staff (other than the Head or Deputy Head of TRU) to issue any warning letter or to take no further action as result of convictions being referred to the TRU.

2.7 Any notification of a conviction(s) or MSI must be placed before the Head or Deputy Head of TRU. This includes historic convictions revealed during the preparation of the submission, which have **not** previously been considered by the Head or Deputy Head of TRU.

2.8 To enable TRU staff to deal with a matter, the circumstances of non-compliance must not present an immediate risk to road safety and only involve shortcomings in paper systems or prohibition notices for defects of a non-recurring minor nature relating to items with no immediate risk to road safety.

2.9 To enable TRU staff to deal with a matter, the operator must have provided a full explanation for the failings or incident and a repetition must be considered unlikely due to the explanation given and the remedial action taken by the operator.

3. Guidance on issuing warning letters

3.1 Warnings might be issued for a variety of reasons and when considering issuing a warning, full consideration must be given to the items detailed below. If there is any question as to the involvement of the transport manager with a standard licence or directors (particularly those listed on a restricted licence) as to how they allowed any shortcomings to exist, then a warning letter may not be appropriate.

3.2 The case must fall within the regulatory starting points detailed in Annex 3 of Practice Guidance Document No.9. The operator and/or transport manager must not have been subject to a previous public inquiry and no previous warning letters are to have been issued in the last five years.

3.3 Where the items of non-compliance suggest a level of regulatory action higher than **Low** (as per Practice Guidance 9, Annex 4), a warning should only be considered if accompanied by a recommendation for the receipt of further undertakings which fully address the identified shortcomings and future management of the transport operation. Any incident or failings to be considered must not present an undue risk to road safety. The operator must have provided a full explanation for the failings or

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incident and a repetition must be considered unlikely, due to the explanation given and the remedial action taken by the operator.

3.4 When considering whether a warning letter will suffice, the TL should undertake an assessment of the type of infringement, the level of seriousness, impact on road safety or fair competition and the risk posed. If any of the answers to the questions below is 'yes', it may not be appropriate to issue a warning letter and a hearing/inquiry may be the appropriate forum to consider the case;

- a. Is the non-compliance an immediate risk to road safety?
- b. Has a public inquiry or previous written warning been issued in the past 5 years?
- c. Is there any question over the proper involvement of the transport manager?
- d. Is the operator's explanation/mitigation incomplete or confused and are no positive assurances and steps to ensure future compliance received?
- e. Does the prohibition include brake/steering/loose wheel nuts?
- f. Is the annual test history across the previous two years below the national pass rate average once Pass After Rectifications are removed? Consideration should be given to the size and type of the operator and the nature of the failure items. In certain cases especially where the operator has few vehicles or incidences of test failure the percentages may be exaggerated so this should be taken into account. Similarly, if the operator fails on items which are minor in nature and could have occurred on the journey to the test centre this should be taken into account.
- g. Are there outstanding undertakings which have not yet been complied with?
- h. Are safety inspection intervals exceeding the original agreement by 25% or more?
- i. Is a variation application in progress to increase the number of vehicles authorised?
- j. Has a compliance audit been undertaken?
- k. What is the fleet size?

All factors must be considered and balanced against the perceived risk and included in the record of the deliberations and retained on the submission.

The case worker must undertake all the relevant research and present this on record for the decision maker to consider. If uncertain the TL should escalate through the management chain for consideration and direction. As per 2.6 above, warning letters following a conviction must be issued by the Head or Deputy Head of TRU.

3.5 Are there any other known concerns? (E.g. are any financial issues highlighted either in external reports or from staff at NICLO, is there a possible change in entity or ownership noted in external reports or from staff at NICLO, are there matters of other none compliance referred by other enforcement agencies such as e.g. HMRC).

3.6 When considering whether a warning letter should be issued for parking at sites other than at the authorised operating centre, the following offers guidance as to how TRU staff should reach a qualitative assessment:

- a. on receipt of any complaint regarding unauthorised parking, all operators must be sent a letter requesting an explanation to the allegation. This request for an explanation is often (but not always) sent by DVA enforcement staff and then submitted to the TRU once a reply is received or the deadline has passed. In

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the absence of a response, the case must be submitted to the Head or Deputy Head of TRU

- b. where the explanation states that the unauthorised parking took place on a single occasion or was similarly irregular formal action under section 23(1)(a) of the 2010 Act might not be appropriate but it is important that operators respect the terms of their licence and understand the concerns of residents
- c. where the unauthorised parking has taken place for the first time and where a full explanation has been given with assurances that the vehicles will be parked at the operating centre in the future or that the vehicle was not parked at the place when not in use a team leader will be authorised to send a formal reminder to the operator of their obligations to park the vehicle(s) in their authorised operating centre when not in use
- d. the team leader considering the case must always consider whether the definition of operating centre as stated in the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 applies to the place referred to in the complaint. Any subsequent reports of failure to use the authorised operating centre must, after investigation, be placed before the Head or Deputy Head of TRU
- e. if there is evidence or an accusation of persistent and continuous parking of vehicles at an unauthorised operating centre a submission must be put to the Head or Deputy Head of TRU
- f. there is no delegation to issue a warning letter in the following cases and these must therefore be referred to the Head or Deputy Head of TRU:
 - i. immediate prohibitions which represent defects of a road safety critical nature
 - ii. multiple historic prohibitions (both delayed and immediate) if the defect is reoccurring
 - iii. where the fail rate at spot checks and annual test is significantly above the national average
 - iv. 'S' endorsed prohibition notices or immediate prohibition notices
 - v. unsatisfactory maintenance investigation reports indicating major systems failure
 - vi. where the operator's response to the DVA evidence disputes their findings
 - vii. where DVA reports either that the transport manager is no longer employed by the operator, or where their employment differs significantly from that stated or where the DVA examiner is unable to make contact with the transport manager
 - viii. where a compliance audit has been undertaken and it illustrates the operator is not compliant with Section 12C of the Act or the statutory undertakings specified on the licence or any conditions

3.7 The starting point for any item of non-compliance must be the same as for a decision to take no further action. If there is any question as to the involvement of the transport manager with a standard licence or directors with a restricted licence as to how they allowed any shortcomings to exist

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then a warning letter on its own may not be appropriate.

3.8 For a warning letter to be issued the operator must have provided a full response to the complaint which addresses all the points raised and further non-compliance must be considered unlikely because action has been taken to rectify the problem by the operator. Similarly, a warning letter may be issued where the matter was exceptional and therefore outside of the operator's control. Matters complained of must be minor in nature.

3.9 Issues including where finance, transport manager control, good repute, establishment or vehicle condition are evidenced are not to be dealt with by TRU staff. Anything that requires further investigation by DVA must not be dealt with until the full facts are known.

4. Guidance on the proposal of further undertakings

4.1 In those cases where a warning letter may be considered, , the TL may also consider whether it is appropriate to request an additional undertaking(s) from the operator prior to the issue of any warning letter (see Annex 3). Standard undertakings are currently considered at public inquiries but would be limited to the following when considered under delegation:

- a. there will be a nil defect daily driver reporting system. Defect reports will show rectification and all reports will be retained for at least two years
- b. a random audit of safety inspections will be conducted not less than monthly when vehicle/trailer will be checked by. A written record of the findings will be kept and will be produced to DVA or the TRU upon request
- c. the director/partner/transport manger will attend a seminar regarding operator licence compliance within a period of x months. Full details of the seminar provider will be produced to DVA or the TRU upon request
- d. roller brake testing / headlamp aim will be carried out on authorised vehicles four times a year, once to include the annual test. A written record of the tests will be kept and will be produced to DVA or the TRU upon request
- e. the proposal to issue undertakings must not be forced upon an operator and must be accepted, in writing, before being attached to a licence. Any refusal by the operator to agree to the additional undertakings may result in the Head or Deputy Head of TRU calling the operator and/or transport manager into a formal hearing/Inquiry. For the sake of clarity, if an operator refuses to accept an undertaking, no warning or no further action letter can be issued by TRU staff. It will not be appropriate in all cases for undertakings to be sought but if they are the agreement must be obtained before any decision is taken on whether to issue a warning letter

5. Guidance on when to take no further action

5.1 The decision as to whether to take no further action for non-compliance is as important as a decision to issue a warning letter. No further action must only be taken in those circumstances where the level of non-compliance is regarded as so minor that there has been no risk to road safety and no tangible commercial advantage gained from the failings. The decision maker must always ask themselves the question: could I justify taking no action if something goes wrong in the future?

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5.2 The starting point for any item of non-compliance must be the same as for the issue of a warning letter detailed above. The case must fall outside of the guidance in which a public inquiry or warning letter should be considered and full consideration of the regulatory starting points detailed in Annex 3 of Practice Guidance Document No.9. The decision maker must consider the principles of decision making, as detailed in Annex 3 of Practice Guidance document No.9. This includes the requirement to consider whether the non-compliant activities of the operator were an attempt to gain a commercial advantage over a compliant competitor. No further action cannot be considered in the following circumstances:

- a. where the items of non-compliance suggest a level of regulatory action higher than **Low** on Practice Guidance 9, Annex 4
- b. the operator / transport manager has been subject to a previous public inquiry and/or previous warning letter in the last five years
- c. the incident presented a risk to road safety
- d. the operator has failed to provide a full explanation for the failings or incident

5.3 To consider no further action the shortcomings must relate to minor paper / administrative failings and repetition must be considered unlikely, due to the explanation given and the remedial action taken by the operator. Prior to deciding upon no further action the decision maker would also be expected to give careful consideration to proposing an undertaking in accordance with the guidance above in order to ensure that the operator can be held fully to account should further issues be made known to the Head of TRU.

5.4 If there is any question as to the involvement of the transport manager with a standard licence or directors with a restricted licence as to how they allowed any shortcomings to exist then 'no further action' will not be appropriate.

6. Guidance on removal of an undertaking

6.1 The Deputy Head of TRU must only consider removing an undertaking attached to a licence in respect of an individual undertaking such as the operator is required to provide a satisfactory compliance audit , or to implement a driver training programme and the like. However, if there are multiple undertakings or an undertaking was added by the Head of TRU or at a preliminary hearing or public inquiry the case needs to be determined by the Head of TRU or Presiding Officer.

6.2 The evidence supplied must show full compliance with the undertaking, confirmed, if appropriate, by a third party, e.g. a satisfactory audit by a trade association. Anything short of full compliance or undertakings that are ongoing or repeated (e.g. operator must have six weekly maintenance inspections) must be referred to the Head or Deputy Head of TRU.

6.3 Any undertakings removed must be reflected on the licence record with a new licence issued with the relevant undertaking removed.

7. Minor clarification of legal provisions to be considered at public inquiry

7.1 TRU staff members at the appropriate level are permitted to make minor amendments to the proposed legislation under which an operator or other is to be called to a hearing but only by way of clarification. There can be no circumvention of

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the Head or Deputy Head of TRU's decision but there may be instances where a submission did not refer to or place sufficient weight on a piece of information as sufficient grounds to include additional legislation or where evidence is received subsequently that warrants inclusion of an additional ground. It is recognised that this delegation allows for the efficient use of tribunal time and resources by avoiding unnecessary adjournments. However, staff are not permitted to make changes to grounds involving establishment, good repute, financial standing or professional competence.

7.2 Additional grounds can only be added by the Head or Deputy Head of TRU. Grounds can only be added if they were apparent in the evidence provided (i.e. the submission was deficient) or if they concern a matter of fact (i.e. a subsequent conviction).

8. Impounding

8.1 Authorised TRU staff members are permitted to send a formal letter on behalf of the Head of TRU advising DVA that no application for return has been received. That delegation is subject to checks being made with the licensing team, and other relevant intelligence sources to ensure that no correspondence has been received prior to the letter being despatched.

8.2 The decision on whether to call a hearing and/or return the vehicle is not delegated under any circumstances.

9. Section 9/43 or 38/36 statements of witness/evidence

9.1 This delegation relates to requests normally received from relevant enforcement agencies. The statements are usually required to confirm whether or not a named individual/company is/are the holder of an operator's licence or whether a vehicle is specified on a particular licence. A TRU case worker may sign the document as an officer of the Department. Any request that is considered complex or sensitive should be referred to the Team Leader and if appropriate to the Head or Deputy Head of TRU. It is incumbent upon the member of staff to ensure that all legal requirements on data handling are complied with and to consider any relevant exemptions in line with operating instructions.

ANNEX 6 – NICLO DELEGATIONS FOR OFFENCES

The purpose of this document is to provide a more detailed description of the type of offence and penalty related matters, and at what level, NICLO staff may make decisions.

In cases where the only issues to consider on an application are penalties or offences for motoring related matters, the Head of the TRU will allow decisions to be made under delegation subject to the requirements set out below.

Before a decision to grant under delegation is made, NICLO will seek explanations relating to all offences in advance along with details as to preventative measures taken. If NICLO team leader or senior team leader deems the explanations satisfactory, then applications may be granted under delegation as set out below.

1. New applications including change of entity (CoE)

Matters which will be delegated to NICLO Team Leader
Speeding, mobile phone, no seatbelt and breach of traffic sign offences where each offence incurs no more than six penalty points and a fine of up to £200, and where up to five such offences have been recorded in a five-year period.
Matters which will not be delegated to NICLO staff
All other types of offences, convictions and penalties and cases where the total number of motoring offences exceeds five in five years

Issuing reminders when granting new applications under delegation

- Declared motoring offences and penalties – no reminder about declaration required unless it is a CoE application and the offences were not declared within 28 days of occurrence in relation to the current licence holder. The reminder is set out below
- Undeclared motoring offences and penalties – a reminder about the need to ensure that any convictions, offences and penalties recorded against the applicant (specify company, directors, partners and transport manager where applicable) and servants or agents must be notified to the Department within 28 days of the occurrence or the licence holder risks regulatory action being taken against the licence

Issuing warnings when granting new applications under delegation

- Where there are more than three offences within the most recent two years, or up to five offences in the last five years, then the applicant should also be warned about the need to adhere to the legislation and that further offences, penalties or convictions recorded against the applicant (specify company, directors, partners and transport manager where applicable) and servants or agents may affect the licence holder's repute or fitness to hold a licence.

2. Variation applications

Where an intelligence check shows that speeding, mobile phone, seat belt and breach of traffic sign offences have been recorded against an operator/director/partner/transport manager, which were not declared within 28 days of the occurrence, the delegations below shall apply subject to a satisfactory explanation being received from the applicant.

Before a decision to grant under delegation is made, NICLO will seek explanations relating to all offences in advance along with details as to preventative measures taken. If the NICLO team leader or senior team leader deems the explanations satisfactory, then applications can be granted under delegation as set out below.

Matters which will be delegated to NICLO Team Leader
Speeding, mobile phone, no seat belt and breach of traffic sign offences where each offence incurs no more than six penalty points and a fine of up to £200, and where up to five such offences have been recorded in a five-year period.
Matters which will not be delegated to NICLO staff
All other types of offences, convictions and penalties and cases where the total number of motoring offences exceeds five in five years

Issuing a reminder when granting variation applications under delegation

- All undeclared motoring offences and penalties – a reminder about the need to ensure that any convictions, offences and penalties recorded against the applicant (specify company, directors, partners and transport manager where applicable) and servants or agents must be notified to the Department within 28 days of the occurrence or the licence holder risks regulatory action being taken against the licence.

Issuing a warning when granting variation applications under delegation

- Where there are more than three offences within the most recent two years, or up to five offences in the last five years, then the applicant should also be warned about the need to adhere to the legislation and that further offences, penalties or convictions recorded against the applicant (specify company, directors, partners and transport manager where applicable) and servants or agents may affect the licence holder's repute or fitness to hold a licence.

ANNEX 7 – NICLO DELEGATIONS FOR INTEL CHECKS

The purpose of this document is to provide a description of the type of intel result and at what level, NICLO staff may make decisions.

In cases where the only adverse issue to consider on an application is a poor annual test pass rate (below 65%), the Department will allow decisions to be made under delegation subject to the requirements set out below.

1. where the pass rate is between 35% and 50%, and the number of vehicles is less than five, an application may be granted by the Caseworker subject to the issuing of the warning below. Where the number of vehicles is five or greater, no delegation exists and the application must be referred to the Head of TRU for direction:
2. where the pass rate is between 51% and 64%, an application may be granted by the Caseworker subject to the issuing of the following warning:

New application:

The DVA has notified the Department that the annual test pass rate for the vehicle registrations provided on the application was [INSERT]%. This is below the national average and the standard expected of operators. You must ensure that all vehicles and trailers (if applicable) are maintained in a fit and serviceable condition at all times otherwise you risk regulatory action being taken against the licence.

Variation application:

The DVA has notified the Department that the annual test pass rate for the vehicle registrations specified on the licence and/or provided on the application [DELETE NOT APPLICABLE] was [INSERT]%. This is below the national average and the standard expected of operators. You must ensure that all vehicles and trailers (if applicable) are maintained in a fit and serviceable condition at all times otherwise you risk regulatory action being taken against the licence.

3. Where the pass rate is 65% or above, an application may be granted by the Caseworker without the need to include a warning.

No delegation exists where the pass rate is below 35%, and an application must therefore be referred to the Head of TRU for direction.

Where other matters are raised in an intel report - in addition to the poor test history - that have been dealt with during the processing of an application (such as anomalies relating to names, addresses, dates of birth and vehicles), fall under other delegated authority (such as penalties and convictions), or do not impact on the applicant's ability to meet the requirements, there is no need to refer the case to the TRU for consideration.

ANNEX 8 – NICLO DELEGATIONS FOR WORKING TIME REGULATIONS

The purpose of this document is to confirm the applications that may be dealt with under delegation where a sole trader/partner/director intends to act as the transport manager on their/its own licence and works more than 48 hours per week but entirely within the business of the licence holder.

The Working Time Regulations 1998 state that:

4.—(1) Subject to regulation 5, a worker's working time, including overtime, in any reference period which is applicable in his case shall not exceed an average of 48 hours for each seven days.

The reference period referred to is normally averaged over 17 weeks.

The Regulations allow for the following exception:

Unmeasured working time

20. Regulations 4(1) and (2), 6(1), (2) and (7), 10(1), 11(1) and (2) and 12(1) do not apply in relation to a worker where, on account of the specific characteristics of the activity in which they are engaged, the duration of their working time is not measured or predetermined or can be determined by the worker themselves, as may be the case for—

(a) managing executives or other persons with autonomous decision-taking powers;

In view of the above exception, NICLO will seek clarification that the total weekly hours worked will be solely within the business of the licence holder. If so, for new and variation applications where the proposed transport manager is also the owner/partner or director and the number of hours worked exceed 48 hours per week, subject to their being no other issues to consider, the application may be granted under delegation by the caseworker.

In cases where the total hours worked exceeds 60 hours per week, they must be referred to the Head or Deputy Head of TRU for a decision.

This delegation will not apply in cases where the number of hours exceeds 48 hours per week and the owner/partner/director is the proposed transport manager and is also proposing to undertake driving duties for the business as the drivers' hours rest periods need to be taken into consideration.

DOCUMENT CONTROL HISTORY

Version 1.0 (published 01/10/2019)	Version 1.1 (published 13/12/2019)
Annex 2:	Updated to outline delegations conferred to Presiding Officers engaged to assist with casework and hearings.
Version 1.1 (published 13/12/2019)	Version 1.2 (published 01/05/2020)
Paragraphs 4-8:	References to the Carltona Principle withdrawn. Legislative allowance for delegation rests with Assembly conferring powers to the Department, and Section 28 of the Northern Ireland Act.
Annex 7:	Adjustment to the delegations available to NICLO staff in cases of particularly low first time pass rates.