



Department for  
**Infrastructure**

An Roinn  
**Bonneagair**

[www.infrastructure-ni.gov.uk](http://www.infrastructure-ni.gov.uk)

## ***Practice Guidance Document No.11***

### **APPEALS**

**Commencement** **01/10/2019**

**Contents:** **Page**

<b>GUIDANCE</b>	<b>2 - 6</b>
Review of decisions	2
Rights of appeal	3
Case law	4 - 6
<b>INSTRUCTIONS</b>	<b>7 - 10</b>
Appeals to the Upper Tribunal	7
Detentions	8
Appeals – general principles	8
Appeal documents	9 - 10
Assistance to the Upper Tribunal	10
<b>ANNEXES</b>	<b>11 - 16</b>
Annex 1 - Preparing Appeal Bundles	11 - 12
Annex 2 - Upper Tribunal Checklist	13 - 15
Annex 3 - Relevant EU regulations	16

**PG11 - Version 1.1 Issued:** **01/05/2020**

### **GUIDANCE**

1. The Department issues the following Guidance in relation to reviews of its decisions and rights of appeal.
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”).
3. A licence holder, transport manager, applicant or statutory objector who is dissatisfied with the Department’s decision can appeal to the Administrative Appeals Chamber of the Upper Tribunal. The appeal form is available from the Upper Tribunal website: [www.tribunals.gov.uk](http://www.tribunals.gov.uk). The appeal must be received within one month from the date the notice of the decision was sent to the appellant.

### **Legislation**

#### *Review of decisions*

4. Section 34 of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 allows the Department to review and, as it thinks fit, vary or revoke any decision to grant or refuse an application for an operator’s licence, or a variation application, if the Department is satisfied that a procedural requirement has not been complied with<sup>1</sup>.
5. The Department can only conduct a review if:
  - notice is given to the applicant or operator of the intention to review the decision
  - a person who appears to have an interest in the decision has requested a review of the decision; or
  - the Department considers there to be exceptional circumstances that justify the review
6. Regulation 16 of the Goods Vehicles (Licensing of Operators) Regulations (Northern Ireland) 2012 provides that the period for service of notice of review on the grounds of procedural irregularity is two months.

Section 35(6) of the 2010 Act provides that a person who, within that prescribed period and who has been certified by the Department as having an interest in the decision, has asked for a review may appeal to the Upper Tribunal against a refusal of that application<sup>2</sup>.

---

<sup>1</sup> An approach equivalent to the ‘slip rule’ in other jurisdictions was approved in 2012/047 Susan Tattersall

<sup>2</sup> 2011/006 re: Mr & Mrs Nguntu (Representors) – Speedcrete CP Ltd

## Goods Vehicle Operator Licensing

### *Rights of appeal*

7. Section 35 of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 gives an applicant for a licence or a variation the right of appeal to the Administrative Appeals Chamber of the Upper Tribunal against the refusal of an application or variation.
8. The holder of an operator's licence may appeal to the Upper Tribunal against any direction given under sections 4(8), 23(1), 23(2), 23(5), 24(1), 28, or 29 of the 2010 Act in respect of the licence. A person who is disqualified from holding or obtaining a licence under Section 25 may also appeal. The Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012 gives a transport manager a right of appeal to the Upper Tribunal against an order made in respect of repute and/or professional competence. This right of appeal is set out in Regulation 15, which also allows the Department to stay that order pending appeal and, if refused, the appellant may request the Upper Tribunal to stay that order.
9. Section 35(5) of the 2010 Act gives an objector a right of appeal against the grant of an application or variation<sup>3</sup> and section 35(6) gives a right of appeal to a person who has applied for a review under section 34, as above, and has been certified by the Department as a person with an interest in the decision.
10. In the above provisions "operator's licence" **does not** include an interim licence issued under section 21.

### *Rights of Appeal – Operating Centres*

11. Only an operator or statutory objector can appeal to the Upper Tribunal against the decision of the Department. Representors have no right of appeal in this way but will be informed and have 14 days from the date of notification to apply to the Upper Tribunal to be made party to the appeal. Whilst representors cannot initiate an appeal to the Upper Tribunal they can apply to the High Court for a judicial review of the Department's decision.
12. Only the operator has a right of appeal against any decision made on review and then only if conditions have been varied or placed on the licence or if an operating centre has been removed. Complainants may challenge the Department's decision on whether to conduct a review and a decision upon review by seeking a judicial review of that decision through the High Court or Court of Session.

### *Rights of Appeal – Stays and General Provisions*

13. Any subsequent appeal to the Tribunal that results in an application for a 'stay' must be submitted immediately to the Department. The decision of the Department will be communicated to the appellant immediately<sup>4</sup>.

---

<sup>3</sup> See Practice Guidance and Instructions on Operating Centres

<sup>4</sup> See Practice Guidance and Instructions on Case Management with regard to stays.

### Case law

14. This Guidance may be subject to decisions of the courts and to subsequent legislation. While this guidance document does not set out all of the case law relevant to the hearing of appeals by the Upper Tribunal, the following principles have been extracted:
15. In GB, traffic commissioners have not in the past been considered a party to proceedings on appeal from their own decisions<sup>5</sup>. Whilst the Department also is not automatically the respondent under the Upper Tribunal Rules, the rules do provide for the Department to respond should it so wish.
16. The appeal cases are clear that, like a tribunal, the Department must comply with the Article 6 right to a fair hearing in deciding issues of civil law<sup>6</sup>. In advance of any appeal, the Department is likely to follow the statement made by the Lord Chief Justice<sup>7</sup> giving the general position that parties are not normally permitted to obtain copies of the audio proceedings but a transcript may be made available upon application and at a cost. Any transcript will first need to be checked by the Department.
17. The relevant sections of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 give the grounds for appeal and a warning does not constitute a direction within the terms of any of the legislation mentioned above. It follows that the Upper Tribunal has no jurisdiction to hear an appeal against a warning. The legislation makes no provision for warnings and these may therefore be issued without first holding a public inquiry<sup>8</sup>. Similarly, the Upper Tribunal has now clarified that there is no right of appeal against the termination of a goods operator's licence for failure to pay the continuation fee under the provisions of Section 47(4) of the Goods Vehicle (Licensing of Operators) Act (NI) 2010<sup>9</sup>, or the Department's decision to refuse an interim licence under Section 35(8) of the Goods Vehicle (Licensing of Operators) Act (NI) 2010<sup>10</sup>.
18. An appeal is not the equivalent of an appeal, for instance, to the Crown Court, where effectively the case begins all over again. An appeal to the Upper Tribunal takes the form of a review of the material placed before the Department together with a transcript of any hearing, which has taken place. As indicated elsewhere, the appellant assumes the burden of showing that the decision under appeal is wrong and in order to succeed must show that "*the process of reasoning and the application of the relevant case law require the Tribunal to adopt a different view*". In practice, and in a number of appeal cases, the phrase plainly wrong has been used<sup>11</sup>. The Upper Tribunal is able to strike out appeals when there is no reasonable prospect of success.

---

<sup>5</sup> Edward Coakley, Coakley Bus Company Ltd and Central Bus Company Ltd (No. 1) [2003] Scot CS 101 (4 April 2003) on appeal from 2001/065, 066 & 067.

<sup>6</sup> Al-Le Logistics Limited etc [2010] EWHC 134 (Admin) paragraph 92 and 2000/065 AM Richardson  
<sup>7</sup> 5th March 2013 on Applications for Audio Recordings of Court Proceedings

<sup>8</sup> 2008/268 Funstons Ltd

<sup>9</sup> 2014/020 Seamus Joseph Patterson t/s Patterson Plant

<sup>10</sup> 2015/063 Mr M & Mrs V Smith

<sup>11</sup> Bradley Fold Travel Ltd & Peter Wright v SofS for Transport (see Above), NT/2013/052 & 53 Fergal Hughes v DOENI, Perry McKee Homes Ltd v DOENI

## Goods Vehicle Operator Licensing

19. The Upper Tribunal, is not bound by its previous decisions or those of its previous incarnation, the Transport Tribunal<sup>12</sup>. It is, however, bound by the higher courts. In *Bradley Fold Travel Ltd and Peter Wright v Secretary of State for Transport* [2010] EWCA Civ 695, the Court of Appeal stated that it is not enough that the appellant court *might prefer a different view* because the burden is on the appellant to show that *the process of reasoning and the application of the relevant law, require it to adopt a different view*. In *Regina (Jones) v First-tier Tribunal (Social Entitlement Chamber) and Another*, *The Times* 31<sup>st</sup> May 2013, the Supreme Court found that an appellate body should not venture too readily into findings of fact made by specialist first-instance decision makers. The Upper Tribunal has expressed the view that it is “*doubtful whether the Administrative Court has any jurisdiction in relation to the Administrative Appeals Chamber of the Upper Tribunal (which is a superior court of record) with appeals being heard by the Court of Appeal and that if such an application were to be made in future, it should include a fully reasoned argument to support the implicit assertion that the Administrative Court does have such jurisdiction*”<sup>13</sup>.
20. As there is a need to ensure that papers are read in advance of a hearing the Upper Tribunal deprecates the production of bundles in addition to those documents which it has called for<sup>14</sup>. It does have discretion to admit evidence not in consideration before the Department but in deciding whether to admit fresh evidence it has consistently applied the conditions laid down by the Court of Appeal<sup>15</sup>.
- the new evidence must be admissible evidence
  - it must be evidence which could not have been obtained, with reasonable diligence, for use at the public inquiry
  - it must be evidence such that, if given, it would probably have had an important influence on the result of the case, though it does not have to be shown that it would have been decisive
  - it must be evidence which is apparently credible though not necessarily incontrovertible

The Court of Appeal has indicated that the above principles could only be departed from in exceptional circumstances, where the interests of justice require<sup>16</sup>. The Upper Tribunal has adopted this approach and considered that there are not exceptional circumstances which would permit the admission of fresh evidence in the absence of a reasonable explanation for the failure to adduce it<sup>17</sup>.

21. If allegations of bias or misconduct are made, including a failure to disclose documents, the allegations must be set out in detail in the Notice of Appeal. In a case of alleged bias, the Tribunal has adopted the practice that affidavits must be served in order that the Tribunal may receive comments from witnesses and the Department. Where documents are alleged not to have been served, less formality is required but must be included in the Notice of Appeal, which the Tribunal is to consider so that this may also be served on the Department and

---

<sup>12</sup> 2003/309 B Smith

<sup>13</sup> 2017/080 North Warwickshire Travel Ltd and Michael James

<sup>14</sup> 2003/254 A Jones

<sup>15</sup> *Ladd-v-Marshall* [1954] 1 WLR 1489 as applied in 2001/068 *Dukes Transport*, 2001/060 *Goldwings (Wales) Ltd* and 2002/040 *Thames Materials*

<sup>16</sup> *E and R v Secretary of State for the Home Department* [2004] EWCA Civ 49

<sup>17</sup> 2015/036 W Martin Oliver Partnership

## Goods Vehicle Operator Licensing

factual comments invited<sup>18</sup>. An allegation of bias is a serious matter and should not be made lightly. The maker will need to prove more than that the official(s) acting on behalf of the Department came to the wrong conclusion, and must specifically show that they were prejudiced and/or predisposed to find against the party irrespective of the evidence<sup>19</sup>. Any complaint made independently of the appeal cannot be considered until after the final appeal has been determined.

22. Where there is a challenge to the accuracy of the transcript of proceedings before the Department, this must be raised in an application (preferably early) to the Upper Tribunal<sup>20</sup>. Where there is no transcript and no reliable alternative, the Upper Tribunal may order a rehearing of the original proceedings<sup>21</sup>. It is also incumbent on the presiding officer (and clerk) to keep a proper note of the oral evidence and representations as these might be requested by the Tribunal in the event of there being no transcript of the hearing<sup>22</sup>.
23. The Upper Tribunal retains a power to order costs where it finds the conduct of the appellant has been unreasonable<sup>23</sup>. It must be evidence such that, if given, it would probably have had an important influence on the result of the case, though it does not have to be shown that it would have been decisive.
24. The Upper Tribunal frequently stresses that presiding officers have the advantage of seeing and hearing directly from witnesses with the result that it is only in the clearest cases that the Tribunal will differ from the Department when it comes to assessing the evidence which is before them, including the credibility of a witness. The Tribunal has also stated that providing there is evidence to support a particular conclusion it is for the presiding officer to decide what weight, if any, to give to that evidence. It therefore follows that grounds of appeal which state expressly or by implication that the presiding officer gave too much or too little weight to a particular piece of evidence will have little or no prospect of success<sup>24</sup>.

---

<sup>18</sup> 2014/072 Ian Russell Nicholas t/a Wigan Container Service, 2004/426 EA Scaffolding and Systems Ltd v SoS for Transport

<sup>19</sup> 2015/057 A Adams – applied the test laid down by the House of Lords in Porter v Magill [2001] UKHL 67: “the judge did not consider his continuing to sit in the proceedings after the appellant made the remark quoted would have led a fair minded and informed observer to conclude that there was a real possibility of the judge being biased”

<sup>20</sup> 2000/001 Gray v Graham, 2001/059

<sup>21</sup> 2004/315 MME Services Ltd

<sup>22</sup> 2018/019 T.R. Benney Transport Ltd & Thomas Robert Benney

<sup>23</sup> 2001/072 A R Brooks

<sup>24</sup> NT 2017/042 Mark Lyons v Driver & Vehicle Agency and Department for Infrastructure

## INSTRUCTIONS

- 25.** The aforementioned Guidance relates to matters which may apply upon an appeal against the Department's decision. These Instructions are issued in respect of the approach to be taken by staff acting on behalf of the Department and dictate the operation of delegated functions.

### **Basis of Instructions**

- 26.** These Instructions are issued to staff and are intended to assist in ensuring the fairness of proceedings involving operators, licence applicants or transport managers (parties).

### *Appeals to the Upper Tribunal*

- 27.** The Upper Tribunal decides appeals against decisions of the Department. The Upper Tribunal is a judicial body and is supported by HM Courts and Tribunal Service, and facilitated by the Northern Ireland Courts and Tribunal Service.

- 28.** The procedure for appeals is set out in the Tribunal Procedure Rules. The Tribunal office will notify the Department, and the following who are invited to respond:

- the operator (if they are not the appellant)
- all statutory objectors
- all representors

- 29.** The Upper Tribunal may at any stage of an appeal order any person (other than the Department) to be added as a party to the appeal.

- 30.** A right of appeal arises when, for example, the Department:

- grants or refuses to grant a licence
- refuses to vary an existing licence
- attaches conditions to the licence, or grants a licence which allows fewer vehicles than the number applied for
- revokes, suspends or curtails an existing licence
- disqualifies an individual or a company

- 31.** The Department normally plays no part in the appeal itself but is required to assist the Upper Tribunal in its preparations.

- 32.** However, the Department can apply to be a respondent in an appeal case provided the Upper Tribunal is notified within 14 days to that effect<sup>25</sup>.

- 33.** An appeal should be lodged within one month of the decision being issued. An appellant who is outside that deadline can still ask the Upper Tribunal to extend the deadline but will probably be asked to explain the delay before the Upper Tribunal decides whether to extend the deadline or not. If the appeal is received out of time it will be appropriate for the Department to ask the Tribunal if it is willing to proceed with the appeal before copying all of the papers.

---

<sup>25</sup> The Tribunal Procedure Rules 2008 NT/2015/05 Raymond Pedlow t/a Pedlow Engineering



### Detentions

34. If the Department decides that the detention of a vehicle was proper the appellant may choose to appeal to the Upper Tribunal but must lodge that appeal within one month of the Department's decision<sup>26</sup>. The Upper Tribunal Secretariat will send notification of the appeal in the usual way. If no appeal has been lodged in this time, the vehicle may be sold or disposed of. If an appeal is made, the Transport Regulation Unit (TRU) should inform the Driver and Vehicle Agency (DVA), so that any disposal is prevented. DVA should always notify TRU when property has been disposed of. TRU should check that the notification had been received.

### Appeals – General principles

35. In preparing the bundle for the Upper Tribunal it might be helpful for members of staff to remind themselves of the purposes for which it is required: in most cases the Department will have made a decision after a hearing. On appeal, it will be for the appellant to show that the Department was wrong and the hearing is called a Review Hearing. In respect of their administrative functions, however, a decision may only be taken by an official of appropriate seniority and experience and, in certain cases, of special importance. In law, all of these decisions are the acts of the Department provided that they are within stated delegations<sup>28</sup>.
36. The appeal takes the form of a review of the Department's decision and/or the reasons given for it. The appeal is not a rehearing of the merits of the matter. In its review the Upper Tribunal is concerned to ensure that the Department properly applied the tests that have to be applied in reaching a decision. The Upper Tribunal will be concerned with whether the Department:
- was plainly wrong, or misdirected itself about the law or the evidence
  - took into account any matter which should not have been taken into account or failed to take account of matters which should have been taken into account
  - offended the rules of natural justice<sup>29</sup> in the conduct of proceedings by showing bias, refusing the right to be heard, or failing to make clear what was alleged against the applicant/licence holder
37. The Upper Tribunal may not take account of circumstances which did not exist at the time when the Department made its decision. The Tribunal therefore does not usually admit or consider fresh evidence which was not before the Department, and does not usually hear witnesses and will only do so in those exceptional cases where the interests of justice require it. Where it does so, it is the responsibility of the Tribunal to ensure that copies of the relevant material are sent to all parties prior to the hearing.

---

<sup>26</sup> See Practice Guidance and Instructions on Detentions

<sup>28</sup> See Practice Guidance and instructions on Delegations

<sup>29</sup> See Practice Guidance and Instructions on Case Management



## Goods Vehicle Operator Licensing

### Appeal documents

- 38.** The Upper Tribunal can give directions so that the case is properly prepared and the appellant is provided with a bundle of documents identical to the bundles which the Tribunal Members will have ahead of the hearing. The Tribunal Secretary is obliged to supply copies of any documents received from the Department upon request from a party unless the Upper Tribunal considers it unreasonable and gives reasons why.
- 39.** An Explanatory Leaflet on appeals suggests that the Upper Tribunal will ask the Department to supply copies of all the relevant papers, including the transcript of the public inquiry if applicable. It is important to remember, however, that the rules require the Department to send the Upper Tribunal a copy of the following upon receipt of a notice of appeal:
- the decision appealed against, whether given in writing by the Department or transcribed, including reasons
  - all documents produced to the Department in connection with the decision appealed against
  - if a public inquiry was held, the transcript of the inquiry or, if no such transcript was produced, the Department's note of that inquiry
  - and if relevant a list of the names and addresses of objectors and representors
- 40.** These Instructions have been drafted to assist in the preparation of documents in advance of the hearing of an appeal against a Department's decision.
- 41.** Appellants are required to provide details about themselves, their representative (if relevant), details of any other parties, and details of the decision being appealed, the grounds of the appeal, whether a stay is or has been sought, and to supply:
- a copy of the decision letter issued by the Department
  - the grounds of appeal
  - a copy of the Department's decision on a stay request (if applicable)
- 42.** The appellant and all respondent parties are required to send to the Tribunal copies of whatever documents or information they rely on in support of their cases, if not already supplied on behalf of the Department. It may assist the Tribunal to save wasted costs by the Department to indicate which documents the appellant already has in its possession. Original evidence of available finance will have been scanned onto the Vehicle Operator Licensing system, to be retained and destroyed in line with the Departmental data retention policy. This will ensure that relevant evidence is available in the event of an appeal. Other documents such as driver defect reports may be difficult to copy. It will not always be practicable to retain a copy of every piece of maintenance documentation produced to the Department for a public inquiry. The Department will often ask for copies to be taken of a few illustrative examples only. It is therefore important that the Public Inquiry Clerk ensures that there is an accurate record of what was produced, for instance records between given dates and, as important, those which are not. The Upper Tribunal can then indicate those documents, which it expects the appellant to produce in support of the appeal.

### **Goods Vehicle Operator Licensing**

43. Furthermore, the appeal may be part of a series of cases and as a consequence the Tribunal may already be in possession of some or all of the documents relevant to a particular appeal. In the above circumstances the Department should check with the Tribunal Secretary and request confirmation in writing if it is not required to send copies of all the documents. That confirmation should be attached to the index or checklist contained in Annex 2 and referred to in correspondence when the bundle of documents is sent to the Upper Tribunal.
44. Members of the Upper Tribunal and the Department are concerned that public money should not be unnecessarily wasted. There may be incidents where it is not necessary to copy the relevant documents referred to above and at Annex 2.
45. The Upper Tribunal has given guidance to assist in preparing appeal bundles. This guidance is set out at Annex 1 and contains some general rules to assist in completing the bundle for the Upper Tribunal. Annex 2 provides a checklist to be attached to the bundle.
46. Whilst the preparation of the appeal papers falls to staff in TRU, they should still be referred to the Head of TRU for checking.

#### **Assistance to the Upper Tribunal office**

47. TRU staff may assist the Upper Tribunal office by clearly marking “redacted” and “full” versions of a written decision or reasons, in the interests of ensuring that private material is not widely circulated.
48. The Upper Tribunal should be assisted by TRU staff emailing to indicate once an appeal bundle has been sent to the Upper Tribunal office.

#### **Formal Directions from the Upper Tribunal Office**

49. The Head of TRU must always be made aware of any appeal in advance of the hearing and preferably upon first receipt of notification. Where the Upper Tribunal makes a direction or formal request the Head of TRU must be informed. Where a case is remitted for rehearing the Head of TRU must also be alerted to any directions before any staff member takes action on their behalf<sup>30</sup>.

### **Transport Regulation Unit**

01 May 2020

---

<sup>30</sup> By example: 2012/028 Shamrock (GB) Ltd

## ANNEX 1 – PREPARING APPEAL BUNDLES

### (1) Pagination

- (a) Bundles need not be paginated with each page being numbered individually and consecutively. Different sections of the file may be separated by cardboard or other tabbed dividers so long as these are clearly indexed. The indexing used at the original hearing should be clearly indicated. Letters and other documents should normally be included in chronological order per section.
- (b) Where page numbers have been used they should be clear and in bold at the bottom of the copies supplied to the Tribunal and in a form that can be clearly distinguished from any other pagination on the document.

### (2) Avoidance of duplication

No more than **one copy of any document** should be included unless there is a good reason.

### (3) Format and presentation

- (a) Where possible the documents should be on A4 size paper. Where a document has to be read across rather than down the page, it should be so placed in the bundle as to ensure that the text starts nearest the spine.
- (b) Where any marking or writing in colour on a document is important, the document must be copied in colour or marked up correctly in colour.
- (c) Documents which are not easily legible should be transcribed and the transcription marked and placed next to the document transcribed.
- (d) Documents in a foreign language should be translated and the translation marked and placed next to the document translated. The translation should be agreed or, if it cannot be agreed, each party's proposed translation should be included.

### (4) Binding

- (a) All documents, with the exception of transcripts, must be bound together. This may be in a lever arch file, ring binder or plastic folder. Plastic sleeves containing loose documents must not be used. Binders and files must be strong enough to withstand heavy use.
- (b) Large documents such as plans should be placed in an easily accessible file.

### (5) Indices and labels

- (a) An index/checklist (see Annex 2) must be included at the front of the bundle listing all the documents and providing the page references for each of them. In the case of documents such as letters, invoices or bank statements, they may be given a general description.

### **Goods Vehicle Operator Licensing**

- (b) Where the appeal bundle consists of more than one file, an index to all the files should be included in the first file and an index included for each file. Documents should be identified briefly but properly.
- (c) Where documents have not been copied by agreement with the Tribunal because it is already in possession of those documents they should be included on the index and marked: 'With Tribunal'.

#### **(6) Identification**

- (a) Every bundle must be clearly identified, on the spine and on the front cover, with the name of the case and reference number. Where the bundle consists of more than one file, each file must be numbered on the front cover and the inside of the front cover.
- (b) Outer labels should use large lettering.

#### **(7) Staples etc.**

All staples, heavy metal clips etc, must be removed.

#### **(8) New Documents**

- (a) Before a new document is introduced into bundles which have already been delivered to the Tribunal, steps should be taken to ensure that it carries an appropriate bundle/page number so that it can be added to the court documents. It should not be stapled and it should be prepared with punch holes for immediate inclusion in the bundles in use.
- (b) An index should be produced for this file, updated as necessary.

## ANNEX 2 - DOCUMENT BUNDLE CHECKLIST FROM TRU TO THE UPPER TRIBUNAL

### COMPLIANCE (In case of appeal following a public inquiry)

CASE REF:.....

SECTION	DOCUMENTS IN THIS BUNDLE	CHECKED	TABS
A.	The brief for the presiding officer, including the call-up letter and all documents which were enclosed with it.		1
B.	Correspondence between the call-up letter and the public inquiry (PI), if any.		2
C.	(1) Documents put in evidence during the hearing, if any, marked as to their source.  (2) Documents put in evidence after the hearing, if any, marked as to their source.		3
D.	(1) The transcript of the PI, including the oral decision if any.  (2) If the decision was made in office (i.e. with no PI), a full note of the decision.		4
E.	(1) Correspondence from a party received after the hearing e.g. relating to conditions or finance. (2) Relevant correspondence seen by the Department from any third party received after the hearing.		5
F.	(1) Any documents which are confidential treated separately and clearly marked 'official sensitive'. (2) Any documents which are confidential, such as sensitive financial statements, treated separately and clearly marked 'official sensitive'		6
G.	The formal decision letter, together with any written reasons or written confirmation of any oral decision. Redacted and full versions must be clearly marked		7
H.	All relevant material concerning stays		8
I.	Miscellaneous documents		9

Signed..... NAME.....

Date.....

**Department for Infrastructure  
Transport Regulation Unit**

## Goods Vehicle Operator Licensing

### LICENSING (In case of appeal following a public inquiry)

CASE REF:.....

SECTION	DOCUMENTS IN THIS BUNDLE	CHECKED	TABS
A.	Correspondence pertaining to a period of grace (professional competence). This includes the initial referral to TRU by Licensing.		1
B.	Correspondence between the grant of the period of grace and re-referral.		2
C.	Further referrals to TRU by Licensing and the decisions returned, including full reasoning		3
D.	Formal decision letter.		4
E.	Correspondence subsequent to the decision letter being issued.		5
F.	Further referral to TRU from Licensing and full written decision.		6
G.	Documents not made available to TRU at the time of receipt but disclosed prior to the decision		7
H.	Material concerning stays, if any, in a separate bundle for the Tribunal's correspondence file.		8
I.	Miscellaneous documents		9

Signed.....

NAME.....

Date.....

**Department for Infrastructure  
Transport Regulation Unit**



**Goods Vehicle Operator Licensing**

**COMPLIANCE or LICENSING (Where no public inquiry was requested)**

**CASE REF:**.....

SECTION	DOCUMENTS IN THIS BUNDLE	CHECKED	TABS
<b>A.</b>	Timeline – a chronological outline of events, calls, and correspondence relevant to the case.		1
<b>B.</b>	Contemporaneous case notes applicable to the case. Include extracts from submissions only where applicable.		2
<b>C.</b>	Application form for the operator, transport manager, and any linked licences		3
<b>D.</b>	Correspondence to and from the operators (listed in chronological order)		4
<b>E.</b>	(1) Any documents which are confidential treated separately and clearly marked ‘official sensitive’.  (2) Any documents which are confidential, such as sensitive financial statements, treated separately and clearly marked ‘official sensitive’		5
<b>F.</b>	Any document proposing to take the action being appealed against, e.g, Propose to Revoke / Propose to Refuse or other notification		6
<b>G.</b>	The formal decision letter, together with any written reasons or written confirmation of any oral decision. Redacted and full versions must be clearly marked		7
<b>H.</b>	All relevant material concerning stays		8
<b>I.</b>	Miscellaneous documents		9

Signed..... NAME.....

Date.....

**Department for Infrastructure  
Transport Regulation Unit**

## **ANNEX 3: EU LEGISLATION**

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

**Regulation (EC) 1071/2009 establishing common rules concerning conditions to be complied with to pursue the occupation of road transport operator applicable from 4<sup>th</sup> December 2011**

### **Article 15 - Decisions of the competent authorities and appeals**

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

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

2. Member States shall take steps to ensure that the undertakings and persons concerned have the possibility of appealing the decisions referred to in paragraph 1 to at least one independent and impartial body or a court of law.

## DOCUMENT CONTROL HISTORY

<b>Version 1.0 (published 01/10/2019)</b>	<b>Version 1.1 (published 01/05/2020)</b>
Paragraph 35:	Removal of reference to Carltona Principle
Annex 2:	Inclusion of proposed Index for Upper Tribunal Bundle where no public inquiry has been requested