

Practice Guidance Document No. 7

DELEGATION OF AUTHORITY (THE DELEGATION OF FUNCTIONS TO STAFF)

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GUIDANCE

1. The Department for Infrastructure (“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 Driver and Vehicle Standards Agency (DVSA) Northern Ireland Central Licensing Office (NICLO), the Transport Regulation Unit (TRU) and Presiding Officers.
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.
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 (“the Northern Ireland Act”) 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 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 minor 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 agent; that person does not become the proper and appropriate person¹ 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 law². 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. Annex 2 provides suggested levels of delegation. Automatic responses generated via the Vehicle Operator Licensing (VOL) system's self-service function administered by DVSA cannot be taken to be the actions of the Department. 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 them³, this does not fully reflect the public law and the different approach advocated by the Upper Tribunal has not been distinguished⁴. 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 expectation⁵. 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 staff⁶. It is open to the Department to conclude that what purports to be an operator's licence is in fact void⁷.
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

¹ R (on the application of the National Association of Health Stores & Another) v Department of Health [2005] EWCA 154

² [Al-Le Logistics Limited and Others \[2010\] EWHC 134 \(Admin\)](#)

³ [2011/043 D A Lewis UPVC Installations Ltd & Another,](#)

⁴ [2005/239 JR Williams t/a JRW Services](#)

⁵ 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?

⁶ See Practice Guidance Document No. 0 on Introduction including how to use the Practice Guidance and [2015/063 Mr & Mrs V Smith](#) which appears to contradict the earlier decision in [2012/012 Aluminium Shapes Ltd](#) and allows for the prospect of a licence or condition being treated as void ab initio.

⁷ [2013/073 Ghulam Qadir Khah](#) 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.

arising. Where a decision is not listed in the delegation it must be referred to the Head of TRU. 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 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.** The Head of TRU will be aware of the expectation on them to engage in active case management⁸ 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. It is therefore equally important that officers and servants acting on its behalf also adopt this approach. The number of applications submitted that are incomplete leads to unnecessary delay and backlogs. It is contrary to the interests of all responsible operators and applicants for staff to engage in unnecessary and protracted correspondence regarding incomplete applications. Once an applicant has been given an opportunity to address the outstanding issues, but fails to do so, then the application should be resubmitted to the Head of TRU. 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. Staff with appropriate delegations 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 Head of TRU and only to the extent indicated in that instrument. Annex 1 therefore provides a suggested instrument of delegation. The Head of TRU will only grant delegations to named caseworkers, Team Leaders and Senior Team Leaders and other named staff, who are designated officers within NICLO, and Presiding Officers engaged under the Northern Ireland Act. 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. Where the Head of TRU departs from Annex 2 they must record their detailed reasons in writing. 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 the appropriate delegated authority. Annex 3 provides guidance on the drafting of conditions and undertakings and connected administrative procedures.

⁸ See Practice Guidance Document No. 8 on Case Management

- 15.** In addition to the above, Annex 5 sets out guidance for TRU staff dealing with referrals from NICLO, DVA and other sources, whilst Annexes 6 – 8 set out further delegations for NICLO.

INSTRUCTIONS

16. The Head of TRU issues the following Instructions in respect of the approach to be taken by staff acting on behalf of the Department in its licensing and regulatory functions, and to dictate the operation of all delegated functions.

Presiding Officers

17. The Department has engaged individual Presiding Officers under section 28 of the Northern Ireland Act 1998. The role is intended to provide assistance to the Transport Regulation Unit through ongoing training and development of staff, and the exercising of the Department's judicial functions. Delegations have been set out at Annex 2 to enable those judicial functions to be fully enacted.

Recording Decisions

18. The Supreme Court has held that the duty to give reasons may extend beyond the tribunal. A party is entitled to know why an adverse decision has been reached and the Department should be in a position to demonstrate that the appropriate balancing exercise has been undertaken and that the decision has been reached based on relevant factors⁹. The courts have indicated that the giving of reasons is intended to:

- concentrate the decision-maker's mind on the right questions
- demonstrate to the recipient that this is so
- show that the issues have been properly addressed
- and show how the result has been reached or alternatively alert the recipient to a flaw in the process

19. There is no need to set out every trivial factor or combination which has no influence, but each relevant factor needs to be there and analysed. Submissions need to be accurate with analysis of any supporting documentation and appropriate action recommended which is consistent with the Practice Guidance documents¹⁰. Those acting as servants or agents of the Department should demonstrate proper regard to the safety of any operation and consider whether a particular set of facts risks giving an applicant or operator an unfair commercial advantage over responsible operators.

20. The Department has entered an agreement with the DVSA and the Office of the Traffic Commissioner (OTC) to provide some officers and servants of the Department, but it is the Head of TRU who decides whether to delegate any functions to individual members of staff working within the DVSA. In the absence of those delegations, managers and caseworkers have no legal authority to take any action in respect of an application or licence and have no right to access Departmental data. Continued access to that data requires individual members of staff to follow the arrangements for information governance, as required by the agreement.

⁹ See Practice Guidance Document No. 9 on Principles of Decision Making

¹⁰ See Practice Guidance Document No. 8 on Case Management

21. Staff handle a variety of telephone calls from operators and applicants; a case note must be taken of important calls such as those relating to requests for extensions, any disputes and refusal or an inability to provide something that has been requested. The Upper Tribunal has observed the helpfulness of case notes taken to record the gist of conversations but that the obligation is on the operator or applicant to respond to any requests. The Tribunal has also made clear that operators and applicants should not use a telephone call as an alternative to providing a written response to correspondence that requires one.

Access to Data

22. Data relating to the licensing of operators belongs to the Department, with the Head of TRU the Information Asset Owner (IAO). The Head of TRU might delegate some of their functions to Deputy Heads and Presiding Officers, but the Head of TRU remains IAO at all times. Individual members of staff are allowed access to licensing data under delegation from the Head of TRU. That delegation of access is limited to those working on behalf of the Department as individual staff fulfil the role of a "data processor" in support of the Department's statutory functions. As above, the Head of TRU may remove a delegation as they deem appropriate. All other requests for access to licensing data will be governed by Memoranda of Understanding, Partnership Access Agreements, or will be considered on a case-by-case basis. Requests for licensing data should be referred to the Head of TRU, or the Department's Information Management Unit.
23. The Head of TRU may delegate to an appropriate officer or servant of the Department authority to disclose data within these datasets to an individual within DVA, DVSA or PSNI for the purposes of enforcement only. This data is general operator licence details and includes, but is not limited to, operator name and date of birth, transport manager name and date of birth, business registered office, vehicle registration marks, operating centre address, restrictions and any previous regulatory action. Should there be any doubt over whether the data can be disclosed this should be referred to the Head of TRU or the Information Management Unit. Data disclosed either: outside of the dataset, for an improper purpose, to someone who should not have access to the data or without a proper justification will lead to a review of that officer's delegation and could result in withdrawal of the delegation.

Transport Regulation Unit

18 April 2024

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 Document No. 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 29

February 2024)

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 ¹¹ 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.	AO
b.	Grant of licence and variation (chargeable) applications where road transport offences have been committed, excluding offences relating to drivers' 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.	EO
c.	Grant of time limited interim authority where all the following are satisfied: • 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.	AO

¹¹ See Practice Guidance Document No. 1 on Good Repute and Fitness with regard to spent convictions.

d.	Grant of time limited interim authority where all the following are satisfied: • 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.	EO
e.	Proposal and subsequent grant of applications subject to a finance review and/or the standard undertakings relating solely to traction only/no parking of trailers at an operating centre, and TM refresher courses where the criteria is applicable and where agreed by the applicant. There must be no attempt to coerce parties into acceptance of proposed undertakings or a finance review. If there is any doubt that cannot be resolved by the TL, cases are to be referred to the Head or Deputy Head of TRU as early as possible.	AO
f.	Save for the undertakings referred to in delegation 2e, proposal and subsequent grant of applications subject to a finance review, 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, undertakings or a finance review. 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.	EO
g.	Grant of applications with a warning and a recommendation to read published Departmental guidance where vehicles have been used illegally following a change of entity.	EO
h.	Grant of trivial applications subject to the standard undertaking relating solely to traction only use which must have been offered by the applicant. There must be no attempt to coerce parties into offering the undertaking. If there is any doubt that cannot be resolved by the TL, cases are to be referred to the Head or Deputy Head of TRU as early as possible.	AO
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	EO

	seem suitable, the case is to be referred to the Head or Deputy Head of TRU as early as possible.	
4.	Other matters	
a.	Refusal of new applications or major variations, and TM only applications, which are incomplete (including out of time adverts and adverts where the mandatory wording is incomplete or more than marginally incorrect. Omission of, <i>'Representors must at the same time send a copy of their representations to the applicant at the address given at the top of this notice'</i> , can be accepted).	EO
b.	Refusal of new applications under Section 10(1) or major variations under Section 17(1) where the advert is out of time or where the mandatory wording is incomplete or more than marginally incorrect. Omission of, <i>'Representors must at the same time send a copy of their representations to the applicant at the address given at the top of this notice'</i> , can be accepted.	EO
c.	Grant of 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.	AO
d.	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.	AO
e.	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.	AO
f.	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.	EO
g.	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.	EO

h.	Decisions regarding satisfaction of requirement regarding qualifications for professional competence.	STL
i.	Acceptance of the surrender of a licence where there is no basis for regulatory consideration and there are no open compliance cases on VOL.	EO
j.	Acceptance of validity of advertisements if the wording contains a minor typographical error, where the GB template has been used instead of the NI template, where the advert refers to DoE for correspondence and the website, and where the incorrect template has been used for a variation to add a new operating centre, provided that no person's interests are likely to have been prejudiced.	AO
k.	Acceptance of validity of advertisements if the wording is marginally incorrect provided that no person's interests are likely to have been prejudiced and where, <i>'Representors must at the same time send a copy of their representations to the applicant at the address given at the top of this notice'</i> , has been omitted.	EO
l.	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.	EO ¹²
m.	Acceptance of a transport manager meeting the requirements of continuous and effective management. Proposals which do not meet the Practice Guidance and Instructions must be referred to the Head or Deputy Head of TRU for a decision. Once granted, direct replacements equating to the same commitment need not be referred to the Head or Deputy Head of TRU unless there is a current compliance issue ¹³ .	AO
5.	Delegations relating to decisions made by staff in the Department	
a.	Decision to issue a warning letter for a regulatory breach.	EO
b.	Decision to take no further action for a regulatory breach.	EO
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	EO

¹² See Practice Guidance Document No. 8 on Case Management

¹³ The transport manager must meet the starting points as set out in the Practice Guidance Document No. 3 on Transport Managers, have no other relevant adverse information as described in Annex 1 of the Practice Guidance Document No. 3 on Transport Managers and be capable of ensuring compliance.

	revocation to be determined by the Head or Deputy Head of TRU.	
d.	Detention – formal letter to DVA advising that no application for return has been received.	EO
e.	Propose and accept regulatory undertakings, if deemed appropriate. Removal of a completed undertaking.	EO
f.	Minor clarification of legal provisions for public inquiry.	EO
g.	Completion of section 9 and 36/38 statements.	AO
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 detained 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
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 Document No. 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 Document No. 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	PO

¹⁴ See Practice Guidance Document No. 5 on Legal Entities

	Guidance Document No. 9 – The Principles of Decision Making and the Concept of Proportionality.	
d.	Call, preside over, and make decisions arising from detention hearings, in line with the limits contained within Practice Guidance Document No. 6 – Detention.	PO

ANNEX 3: FORMULATION OF CONDITIONS & UNDERTAKINGS

Conditions and undertakings relating to operating centres are only relevant to the use of a site by HGVs (vehicles over 3.5 tonnes gross plated weight).

Guidance on format of conditions

Conditions must be:

- lawful and reasonable
- unambiguous
- capable of being monitored and enforced

Road safety conditions/undertakings

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

Examples of road safety conditions/undertakings

- 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.
- Authorised vehicles shall enter and leave the operating centre in forward gear.

Environmental conditions

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.

Conditions may relate to:

- number, type and size of motor vehicles or trailers
- vehicle and trailer parking arrangements at or in the vicinity of any such centre
- the hours at which operations (including maintenance, loading and unloading) may be carried out

Examples of environmental conditions

- Authorised vehicles shall not exceed 7½ tonnes gross vehicle weight.
- The engines of authorised vehicles shall not operate for more than five minutes before the authorised vehicles leave the operating centre.
- There shall be no maintenance at the operating centre.
- Authorised vehicles shall be parked within the area indicated on the plan attached to the licence.
- 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.

Reasons for imposing conditions/undertakings

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

Important exception

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.

Removal of variation conditions

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.

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. Otherwise conditions or undertakings may be removed or varied subject to either:

- written agreement of all parties originally involved lack of response to advertisement or Applications and Decisions publication
- change in the circumstances which caused the original imposition of the conditions whether road safety or environmental

Reasons for removing conditions/undertakings

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

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.

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.

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.

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.

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 Head of TRU and that any proposals by NICLO to remove any delegations must be fully discussed with the Head of TRU who will make the final decision.

Process

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.

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.

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.

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.

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.

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.

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.

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.

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

- Caseworker/team leader/senior team leader
- Date of check
- Licence Number
- Operator Name – of the entity and of any trading name
- Date input accuracy
- Searches
- Advert
- Maintenance arrangements
- Correspondence
- Transport manager qualifications
- Transport manager declaration
- Convictions
- Finances
- Conditions/undertakings
- Submission
- Intelligence check
- Publication
- Delegation
- Any additional comments

Matters to be included in the audit template – compliance staff

- Caseworker/team leader/senior team leader/DHTU/PO
- Date of check
- Licence Number
- Operator Name – of the entity and of any trading name
- Date input accuracy
- Searches
- Maintenance arrangements
- Correspondence
- Transport manager declaration
- Convictions
- Finances
- Conditions/undertakings
- Submission – to include cross check that the call up letter (where applicable) refers to the correct legislation
- Intelligence check
- Call up letter – where appropriate
- Warning letter – where appropriate
- Publication
- Delegation
- Any additional comments

Additionally, an audit of documents received electronically in relation to digital applications will be carried out to ensure their authenticity. The documents to be included in the audit are newspaper advertisements, financial evidence, TM(NI)1 forms and certificates of professional competence. The audit will apply to 5% of

applications received by digital means, and hard copies of all relevant documents will be obtained in those cases. Knowledge led audits will be carried out on an 'as and when' basis, subject to knowledge, previous history or suspicion. A request for hard copy financial documents will be triggered by a 'Yes' answer to any of the 'previous financial history' questions.

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 are 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 administrative decisions within the TRU. All members of staff working within the TRU must read and fully understand this document.

Guidance on exercise of delegations

Decisions must be:

- lawful and reasonable
- exercised within strict parameters in accordance with the Department's Practice Guidance documents and in particular the Practice Guidance Document No. 6 on Delegations and Annex 3 of the Department's Practice Guidance Document No. 9 on the Principles of Decision Making
- reasoned and recorded

Guidance on making recommendations and decisions for operator licence failings

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 Guidance Document No. 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 points offer further guidance as to how staff acting under delegations should reach a qualitative assessment:

Recommendations for a formal 'in-chambers' hearing (ICH), preliminary hearing (PH) or public inquiry (PI) can only be considered by either the Head or Deputy Head of TRU. Each recommendation must be justified and include the rationale for the recommendation.

ICH recommendations should be passed to the Deputy Head of TRU and the shortcomings must fall outside of the guidance in which a PI case should be considered or where the Head of TRU is required to consider loss of repute.

A decision to hold an ICH must be documented and proportionate given the issues being considered. If any of the infringements include MSIs, 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.

PH or PI recommendations should be passed to the Head of TRU for consideration and action.

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

- where several different issues of non-compliance are identified and include Most Serious Infringements (MSIs) and/or Very Serious Infringements (VSIs)
- where the operator and/or the transport manager have been subject to a previous public inquiry
- where previous warning letters have been issued in the last five years
- 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)
- where there is evidence of fraud, falsification of documents or intentional deception, including the use of any device to interfere with the tachograph recording equipment, such as, magnets

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 not previously notified to the TRU.

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 notified to the TRU.

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

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.

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 mitigation given and the remedial action taken by the operator.

Warning letters

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 with a restricted licence as to how they allowed any shortcomings to exist, a warning letter is unlikely to be appropriate.

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.

Where the items of non-compliance suggest a level of regulatory action higher than 'LOW' (as per Practice Guidance Document No. 9, Annex 4), a warning can be considered if accompanied by 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 a risk to road safety. The operator must have provided a full explanation for the failings or incident and a repetition must be considered unlikely, due to the mitigation given and the remedial action taken by the operator.

When considering whether a warning letter should be issued for maintenance issues, the following points offer direction as to how staff should reach a qualitative assessment. 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;

- Is the non-compliance an immediate risk to road safety?
- Has there been a public inquiry in the past 5 years?
- Are there concerns that the transport manager is not exercising continuous and effective management over the vehicle operation?
- Is the operator's explanation/mitigation incomplete, incoherent and has the operator failed to demonstrate that they have taken positive steps to ensure future compliance?
- Have any of the prohibitions been 'S' marked?
- Is the annual test history across the previous two years below the national pass rate average once 'Pass After Rectifications' (PRS) 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.
- Are there outstanding undertakings to be completed?
- Are safety inspection intervals exceeding the original agreement by 50% or more?
- Is a variation application in progress to increase the number of vehicles authorised?
- Has a compliance audit been undertaken?

- What is the fleet size?
- Are there any other known concerns (i.e., any financial issues highlighted in reports or from licensing and possible change in entity or ownership noted on reports or from licensing)?

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

TRU staff must undertake all the relevant research and present this on record for the decision maker to consider. Warning letters following a conviction must be directed by the Head or Deputy Head of TRU.

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 non-compliance referred by other enforcement agencies such as e.g. HMRC)?

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:

- on receipt of any complaint regarding unauthorised parking, all operators must be sent a letter requesting an explanation to the allegation. In the absence of a response, the case must be submitted to the Head or Deputy Head of TRU
- 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
- 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 case worker will send a formal reminder to the operator of their obligations to park the vehicle(s) in their authorised operating centre when not in use
- the case worker 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
- 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
- no delegation exists for TRU case workers to issue a warning letter. The following cases 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 success/fail rate at spot checks and annual test is significantly below the national average
- iv. 'S' endorsed prohibition notices or immediate prohibition notices
- v. unsatisfactory maintenance investigation reports indicating major systems failure
- vi. 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
- vii. where the operator's response to any DVA evidence disputes their findings
- viii. 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
- ix. where there are no records produced and/or no systems in place

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

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.

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.

Proposal of undertakings

Whilst the current operator licence undertakings should generally be considered sufficient to ensure operator licence compliance, there may be limited cases where it

is appropriate to suggest the attachment of extra undertakings on the licence. Consequently, TRU staff may, as part of the decision-making process, 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). Such undertakings should be very specific to the regulatory issue(s) being considered and should not place an unnecessary administrative burden on the operator, applicant, or TRU staff. They will therefore be likely to relate to specific matters that enhance the existing licence undertakings such as transport manager training or the provision of a third-party audit.

An undertaking regarding the provision of financial evidence can also be attached to the licence and if so¹⁵, will be in the following terms:

“(named operator) to provide financial evidence in the name of the (the operator) covering (identified three-month period), to the Northern Ireland Central licensing Office in Leeds by no later than (date – usually 6 months from grant). This must show that the operator has continued to meet the required level of available finance throughout the period by reference to an average balance dependent on the rates applicable at that time”.

The proposal to accept 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 accept the additional undertakings will result in a submission being put to the Head or Deputy Head of TRU for all matters under consideration. 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. Where a finance condition is attached there must be no other licensing or regulatory issues and the application must be out of the objection period.

No further action

The licensing system is intended to address the risks to road safety and fair competition. Accordingly, the decision to take no further action for non-compliance can be as important as any other regulatory decision to convene a public inquiry. 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 actions. TRU staff must always ask themselves the question: ‘can I justify taking no action if something goes wrong in the future?’.

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

¹⁵ See Practice Guidance Document No. 2 on Finance

attempt to gain a commercial advantage over a compliant competitor. It therefore follows that No Further Action can only be considered if it fails to meet the criteria set out above regarding warning letters.

To consider No Further Action, the shortcomings must relate to minor failings and repetition must be considered unlikely, due to the mitigation 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 non-compliance issues arise.

Removal of an undertaking

The Deputy Head of TRU must only consider removing an undertaking attached to a licence in respect of a factual 'one time' undertaking such as the operator is required to provide a satisfactory compliance audit, or to implement further driver training. 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.

The evidence supplied must show full compliance with the undertaking, confirmed, if appropriate, by a third party: a satisfactory audit by a trade association or driver training certificates for example. 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.

Where, in the opinion of the Head or Deputy Head of TRU, an audit report appears to identify further shortcomings but there is evidence of prompt, relevant and potentially effective remedial action, it will be necessary to ask the operator to provide an undertaking for a further audit within (normally) 3-6 months in order to demonstrate that the action has taken place and remedied the problem. This can be done only once. Where the original issues giving rise to the audit undertaking have not been addressed so as to suggest future non-compliance then the issue should be referred back to the Head of TRU.

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

Minor clarification of legal provisions to be considered at public inquiry

TRU staff members 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 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 hearing 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.

Grounds can only be added, not removed. Additional grounds can only be added by the Head or Deputy Head of TRU. Furthermore, grounds can only be added if the evidence was provided to the Head or Deputy Head of TRU.

Detention

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 is subject to checks being made with the licensing team, DVA, and other relevant intelligence sources to ensure that no correspondence has been received prior to the letter being despatched.

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

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

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.

Acceptance of the surrender of a licence

As an operator's licence is "property" under the Human Rights legislation it is vital that there are proper checks to ensure that the individual offering surrender has the right to do so. Consequently, a pro-forma SUR(NI)1 or an online digital surrender request must be completed by a properly authorised person (sole trader, partners, or a director listed at Companies House).

Where the licence holder is a corporate entity and in administration, liquidation, or receivership, surrender may be accepted upon written application from the relevant insolvency practitioner.

Where there is any doubt as to the authority of the person offering surrender of an operator's licence then the issue must be referred to the Head of TRU. Where a corporate entity no longer exists in law (i.e. it has been wound up) an application for surrender cannot be accepted.

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.

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 reputation or fitness to hold a licence.

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 reputation 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.

- 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:
- 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(s) registration(s) provided on the application was/were [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(s) registration(s) specified on the licence and/or provided on the application [DELETE NOT APPLICABLE] was/were [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.

- 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 or Deputy 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 (Northern Ireland) 2016 state that:

4.—(1) Unless an employer has first obtained the worker's agreement in writing to perform such work, a worker's working time, including overtime, in any reference period which is applicable in the case of that worker, 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

24. Regulations 4(1) and (2), 7(1), (2) and (6), 12(1), 13(1) and (2) and 14(1) do not apply in relation to a worker where, on account of the specific characteristics of the activity in which the worker is engaged, the duration of the worker's working time is not measured or predetermined or can be determined by the worker, as may be the case for— (a) managing executives or other persons with autonomous decision-taking powers; (b) family workers; or 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

<u>Version 1.0 (published 01/10/2019)</u>		<u>Version 1.1 (published 13/12/2019)</u>	
Annex 2:	Updated to outline delegations conferred to Presiding Officers engaged to assist with casework and hearings.		
<u>Version 1.1 (published 13/12/2019)</u>		<u>Version 1.2 (published 01/05/2020)</u>	
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.		
<u>Version 1.2 (published 01/05/2020)</u>		<u>Version 1.3 (published 26/11/2021)</u>	
Annex 2:	Adjustment to the delegations available to NICLO Caseworkers to agree specific, and predefined undertakings.		
<u>Version 1.3 (published 26/11/2021)</u>		<u>Version 1.4 (published 02/03/2022)</u>	
Annex 2:	Adjustment to the delegations available to NICLO Caseworkers & Team Leaders to agree finance reviews.		
<u>Version 1.4 (published 02/03/2022)</u>		<u>Version 1.5 (published 20/04/2022)</u>	
Annex 2:	Adjustment to the delegations available to NICLO Caseworkers & Team Leaders to allow advertisements containing minor typographical error.		
<u>Version 1.4 (published 02/03/2022)</u>			
Annex 2:	Adjustment to the delegations available to NICLO Team Leaders to account for changes in TM residency and qualification requirements under the Trade & Co-operation Agreement (TCA).		
<u>Version 1.7 (published 09/09/2022)</u>			
Annex 2:	Adjustment to the delegations available to NICLO Team Leaders to allow grant with warning on applications related to a CoE within 3 months of that change occurring.		

<u>Version 1.8 (published 12/12/2022)</u>	
Annex 2:	Adjustment to the delegations available to NICLO caseworkers & Team Leaders in respect of Time Limited Interims & evidence of illegal use.
<u>Version 1.9 (published 24/01/2023)</u>	
Annex 2:	Adjustment to the delegations available to NICLO Team Leaders to allow advertisements incorrect wording.
<u>Version 1.10 (published 01/08/2023)</u>	
Annex 2:	Adjustment to the delegations available to NICLO Caseworkers to allow traction only undertakings.
<u>Version 1.11 (published 18/09/2023)</u>	
Annex 2:	Adjustment to the delegations available to NICLO Team Leaders to refuse new applications or major variations, or TM only applications, where the mandatory wording of the advertisement is incomplete or more than marginally incorrect.
Annex 2:	Adjustment to the delegations available to NICLO Caseworkers to allow advertisements which refer to DOE for correspondence and the website.
<u>Version 2.0 (Published 29/02/2024)</u>	
Adjustments to reflect the changes to legislation post Brexit and updates to case law.	
<u>Version 2.1 (Published 18/04/2024)</u>	
Annex 2:	Adjustments to the delegations available to NICLO Team Leaders to allow advertisements where the mandatory wording, ' <i>Representors must at the same time send a copy of their representations to the applicant at the address given at the top of this notice</i> ', has been omitted.
Annex 2:	Adjustment to delegations available to NICLO caseworkers in respect of withdrawal of applications and termination of the licence for non-payment of fees by the fee due date.