

PRACTICE DIRECTION NO 3

DRIVER CONDUCT

Effective from June 2008

A. INTRODUCTION

1. The Secretary of State refers decisions regarding the conduct of applicants for, and holders of passenger carrying vehicles (PCV) and large goods vehicles (LGV) driving licences to the Traffic Commissioners. Traffic Commissioners must take account of the relevant legislation, set out in the Road Traffic Act 1988 as amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 and in the Motor Vehicles (Driving Licences) Regulations 1999.
2. The legislation requires Traffic Commissioners to take account of the conduct of an applicant or licence holder “as a driver of a motor vehicle and [for PCV applicants/drivers only] in any other respect to his holding a PCV driving licence.” Consequently they will rarely be able to take account of the personal circumstances of a driver (unless of course they specifically relate to his or her conduct whilst driving a motor vehicle).
3. The criminal courts can and do take account of a driver’s personal circumstances when sentencing as a result of a conviction, which serves to highlight the differing nature of the two jurisdictions. Specifically a Court is punishing a person for an offence, whereas the Traffic Commissioner is considering not whether to punish a person but whether that person is fit to obtain or to continue to hold, a vocational licence. There is therefore no question of the “double jeopardy” rule being applied.

Traffic Commissioners are concerned that their approach when dealing with questions of an individual’s fitness to hold vocational entitlement should be consistent. These guidelines are intended to ensure that consistency of approach, but are only to be used as a starting point. These guidelines are not to be read too prescriptively or too narrowly and Traffic Commissioners have full discretion to move up or down from the recommended guideline if their judgement deems it appropriate.

5. Guidelines with regard to endorsable convictions have been in use since 1994. Since that time however there has been a large increase in the number of offences reported. There is now a need to amplify and specify the matters to be taken into account by Traffic Commissioners when hearing cases involving endorsable and non-endorsable offences and to give guidance on the likely orders to be made. There are many types of driver conduct which cannot be set out in detail in these guidelines. This Practice Direction lists only the more common matters and Traffic Commissioners will take into account any others which are raised, taking whatever action appears to be appropriate in the individual circumstances.

B. REFERRALS TO TRAFFIC COMMISSIONERS

6. DVLA is responsible for all aspects of drivers' licences with the exception of deciding on conduct cases for vocational drivers which parliament has decided shall be referred to Traffic Commissioners by the Secretary of State.
7. Traffic Commissioners can only take action on a vocational conduct case upon the referral of that case to the Traffic Commissioners by the Secretary of State. Referrals will have been properly made in the following circumstances:
 - a. For endorsable convictions: by DVLA.
 - b. For non-endorsable offences and third-party notifications: under the authority of the Secretary of State for Transport
8. Under the legislation a Traffic Commissioner may deal with a case in writing or require the person concerned to attend a hearing before the Traffic Commissioner.
9. The cases which should be referred to the Traffic Commissioner by DVLA are set out below:
 - a. Under Section 113 of the Act, first-time applicants for a provisional vocational licence who have accumulated 9 penalty points on their Ordinary Driving Licence (ODL) over the past 3 years or been disqualified as well as previous holders of vocational licences whose ordinary driving entitlement has already been returned.
 - b. Under Section 113 of the Act any holder of a vocational licence aged 21 or more who has achieved 6 penalty points within 2 years of obtaining his ODL and has therefore reverted to learner status under the Road Traffic (New Drivers) Act 1995.
 - c. Under Section 117 of the Act, persons who have previously held a vocational licence, whether full or provisional, but who have been disqualified by a court for more than 56 days, and whose ordinary driving entitlement has not yet been restored.
 - d. The Secretary of State may also, under Section 116 of the Act, refer to Traffic Commissioners holders of LGV or PCV licences whose fitness may be in doubt. These may include drivers with non-endorsable offences, convictions, cautions or fixed penalties (such as drivers' hour's offences), relevant criminal convictions, cautions or fixed penalties in the case of PCV drivers, or others where, for instance, tachograph evidence demonstrates persistent speeding.

10. Any driver called to appear before a Traffic Commissioner will be dealt with individually. Such proceedings will be open to the public unless the case involves evidence where the Traffic Commissioner is of the opinion that the proceedings should be heard “in camera” in the interest of justice. All driver conduct proceedings will be recorded. Should an applicant for a licence not respond to two requests for written information, or fail twice without good reason to attend a hearing, the Traffic Commissioner will normally decline to proceed further with the application in which case the licence will be refused. This will be entered into DVLA’s drivers’ record as Refused (until 70th birthday); so that the system will produce an alert if a subsequent vocational licence application is made.

C. LEGISLATION

Section 110 – 121 of the ROAD TRAFFIC ACT 1988 AS AMENDED.

Regulations 56 and 57 of the Motor Vehicles (Driving Licences) Regulations 1999

D. SPECIFIC GUIDANCE FOR ENDORSABLE OFFENCES

11. First time Applicants and Renewals (Excluding drink/drive offences)

Nine or more penalty points

- a. When the licence has been endorsed with points within the last 6 months, the applicant will be sent the ‘minded to refuse’ (for a period of 6 months) letter.
- b. Where penalty points were accumulated between a 6 month and three year period, applicants will usually have their applications granted but a “**requirements warning**” letter will be sent emphasising the additional requirements and standards expected of a professional driver, the link between vocational entitlement, the Traffic Commissioner and conduct, and the implication for Operator licensing.

12. First Disqualification (Excluding drink/drive offences)

Applicants whose disqualification has ended in the last 6 months, will normally be sent the ‘minded to refuse’ (for a period of 3 months) letter.

13. Second and/or Subsequent Disqualifications (Excluding drink/drive offences)

a. First Application

- (i) If the applicant’s disqualification is more than 6 months old then the application will usually be granted and a “requirements warning” letter sent.

- (ii) For applicants with 2 or more disqualifications, the last of which has expired less than 6 months previously, the application will normally be sent the 'minded to refuse' (for a period of 6 months) letter.

b. Renewal

- (i) If the sum of disqualifications over the previous three years is less than 12 months then the application will usually be granted and a "requirements warning" letter sent.
- (ii) When an application is received and the sum of the disqualifications over the previous 3 years is more than 12 months the 'minded to refuse' (for a period of 6 months) letter will usually be sent.

14. Offenders under the Road Traffic (New Drivers) Act 1995

All referrals will be sent the 'minded to refuse' letter advising them that the return of the vocational licence will normally be **refused for 1 month** beyond the restoration of other licences.

15. Drink/Drive Disqualifications (within the previous ten years)

a. First Disqualification

- (i) A first disqualification for 12 months or less will normally result in the application being granted but a "requirements warning" letter will be sent.
- (ii) A first disqualification for more than 12 months but less than 3 years will normally result in a further period of **disqualification on a sliding scale of one month per year of disqualification** to be imposed. This will be in the form of the 'minded to refuse' letter being sent.

b. Second and/or Subsequent Disqualifications

- (i) **All** multiple disqualifications will be referred to the Traffic Commissioner for consideration.

NB When an application is initially refused via a 'minded to refuse' letter, applicants may make written representation or exercise their right to be seen by the Traffic Commissioner at a hearing.

16. Retests

Where an applicant/previous holder has not driven an LGV/PCV for the previous 5 years or longer he/she is likely to be **required to retake the appropriate test**. This will not be imposed in any punitive sense, rather to satisfy a qualified testing officer, in the interests of road safety that the individual is still able to drive to the appropriate standard. Since this will probably involve some cost it may not always be appropriate to order an additional further period of disqualification.

Use of mobile phones

17. Parliament has recognised the inherent dangers of drivers of motor vehicles using mobile telephones whilst driving. Consequently, the changes in legislation on 27 February 2007, provides that a fixed penalty of £60.00 shall be issued to all drivers who use mobile telephones whilst driving without a 'hands free' device and the imposition of 3 penalty points on the licence. Traffic Commissioners regard any use of mobile telephones (whether with or without a hands free device) as unsafe and regard as Best Practice that there should be no use of mobile telephones whilst driving.
18. In recent times there has been an unacceptable increase in the number of vocational licence holders using mobile telephones without a hands free device whilst driving large goods and passenger carrying vehicles. This practice is wholly unacceptable and presents an undue risk to road safety. Consequently, **All reports of vocational drivers using their mobile telephones whilst driving without a hands free device will result in that driver being called to a driver conduct hearing to show cause why an order should not be made for the suspension of the vocational entitlement for 14 days to commence with immediate effect.**
19. Each case will be decided on its own facts and merits and Traffic Commissioners will be keen to ascertain the reason the driver is engaged in the telephone call. In cases where drivers are speaking with their employers or their customers the Traffic Commissioner will consider the effect this will have upon the operators' repute.

E. SPECIFIC GUIDANCE FOR NON-ENDORSABLE OFFENCES

Speed limiters

20. Speed limiters are designed and fitted to ensure that road safety for drivers themselves and other road users is preserved. They serve to limit the speed at which vehicles above a certain weight can travel on our roads. Braking and stopping distances are greatly affected by speed in any motor vehicle and this is never more evident than in a Large Goods Vehicle or Passenger Carrying Vehicle. Furthermore, they ensure that fair competition between operators is upheld. Over recent years enforcement agencies have detected widespread abuse of speed limiters, and Traffic Commissioners in setting these guidelines are keen to reflect the seriousness of speed limiter breaches in the way they deal with transgressions by the drivers. Disabling a speed limiter is quite clearly an expression of intent to exceed the legally permitted speed.
 - a. Speeding in a vehicle with speed limiter not working with no evidence of tampering or interference by the driver but with clear written evidence of the driver bringing the matter to his employer's attention either via the tachograph or the driver defect reporting system. **Formal warning.**
 - b. Speeding in a vehicle with speed limiter not working with no evidence of tampering by the driver but with no evidence of the driver bringing the matter to his employer's attention either through the defect book or by writing on the reverse of the tachograph chart. **1 month suspension period.**

c. Speeding in a vehicle with disabled speed limiter and evidence of tampering or interference by the driver. **Suspension/revocation and disqualification from between 2 to 4 months.**

d. Use of any device to disable the speed limiter. **Revocation and disqualification for between 6 to 12 months.**

Falsification of Tachograph Charts

21. Tachograph recording equipment is installed in commercial vehicles to enable a record to be kept of the work undertaken by the driver of that vehicle. The recording equipment is a sophisticated device that is calibrated for accuracy and provides a reliable record to many parties including the driver's employer as well as the Enforcement Authorities. The latter have been given the power by Parliament to examine the records produced by that equipment and to prosecute if certain offences are detected as a result of that examination. Those offences are generally breaches of EEC Regulations 561/2006 and 3821/85 (as amended) which set the limits of work which can be undertaken by such drivers and establish the ways in which drivers must comply with the recording requirements. The Traffic Commissioners take particular account of the fact that these rules are designed to ensure road safety, to protect drivers from fatigue and from exploitation from unscrupulous employers as well as to protect other road users from the consequences, which inevitably flow from tired drivers in commercial goods and passenger vehicles.
22. There are some drivers within the Industry who have either falsified the records made by that equipment or who have tampered or interfered with the equipment itself to allow a false tachograph record to be made. The result of this means that the Enforcement Agencies will in many cases be prevented from establishing whether or not the particular driver has complied with the Regulations referred to above. On many occasions the driver will have falsified the record with the express intention of hiding such breaches of the hours and tachograph regulations from the Authorities or from his employer who is also required to ensure compliance with them. In many cases the falsification itself will be an offence of dishonesty for which the driver may have been prosecuted. Traffic Commissioners will regard falsification as more serious than the offence that it may be designed to conceal. Conscientious operators regard falsifications of tachographs and interference with recording equipment as so serious as to warrant summary dismissal in many cases.
23. There have been a number of recent case law developments involving prosecutions for falsification of tachograph charts and Traffic Commissioners are required to take note of those in dealing with driver conduct cases. In the case of *R v Saunders, Hocking and Williams* (Times Law Report 21 02 2001) the Court of Appeal stated that where offences involve safety of the public, those who commit offences of this kind must understand that there will be serious consequences if and when the matter comes to light. Accordingly, the Court dismissed appeals against sentences of eight months imprisonment for offences of making false entries on tachograph charts.

- a. Failure to keep a full record of the complete driving period. **Formal warning to 1-month suspension.**
- b. Deliberate falsification of the chart will result in either suspension of the vocational entitlement or revocation and disqualification dependant upon the scale and degree. Whilst this guideline is not exhaustive it is likely that the Traffic Commissioner will apply a **sliding scale of one month's suspension per offence for up to 3 false records offences, and revocation and disqualification for up to 6 months for up to 5 offences.** Six or more false records will be likely to result in **revocation and disqualification for twelve months.**
- c. The use of any device to interfere with the recording equipment. **Revocation and disqualification for 12 months.**

Drivers Hours and Tachograph Rules Offences

24. The drivers hours and tachograph rules and regulations are set out in EEC Regulations 561/2006 and 3821/85 (as amended) and set the standard for the limits of work which can be undertaken by such drivers and establish the ways in which drivers must comply with the recording requirements. The Traffic Commissioners take particular account of the fact that these rules are designed to ensure road safety, to protect drivers from fatigue and from exploitation by unscrupulous employers as well as to protect other road users from the consequences, which can flow from tired drivers driving commercial goods and passenger vehicles. Traffic Commissioners expect vocational licence holders fully to acquaint themselves with the relevant legislation before undertaking employment as a "professional driver" of commercial goods or passenger vehicles. Furthermore vocational licence holders are reminded that free advice and assistance on the relevant legislation and free written guides are available from the Vehicle and Operator Services Agency and Offices of the Traffic Commissioner. Indeed the Trade Associations and Trade Publications also offer a wealth of advice to drivers on their obligations as professional drivers.
 - a. Drivers' hours offences committed on infrequent or isolated occasions. **A formal warning together with an assurance that the driver will acquaint him or herself with the driver's hours' rules. In certain cases this warning will be in written form from the Traffic Commissioner and in certain cases it will be necessary for the driver to appear at a conduct hearing before the Traffic Commissioner. Traffic Commissioners would wish to stress that mitigation to the effect that the offence was 'just over' the limit is unlikely to be seen as a reasonable excuse: professional drivers have a duty to keep within the law.**
 - b. Persistent and/or habitual transgressions of drivers' hours offences. **A minimum of 4-week suspension period, to be increased in accordance with the number of offences found.**

Notifiable Convictions

25. In accordance with the Home Office Circular 6/2006 - The Notifiable Occupations Scheme Revised Guidance for Police Forces, where listed in Category 2 are Passenger Carrying Vehicle (PCV) Drivers (Bus Drivers). Notifications of offences committed by PCV drivers are sent by police to the Police Liaison Unit, DVLA and forwarded to the appropriate Traffic Commissioner who decides on the required action.

OTHER CRIMINAL OFFENCES

PCV Drivers

26. Traffic Commissioners will be dealing with a unique set of circumstances and consequently these guidelines will not cover all eventualities. Nonetheless, it is felt appropriate to define those cases where Traffic Commissioners will be considering suspension of the entitlement or revocation and disqualification.
27. Convictions, or police cautions, for sexual offences will frequently warrant the revocation of a person's PCV licence due to the particular risk that sexual offenders pose to the traveling public. In particular those listed in Schedule 3 of the Sexual Offences Act 2003 will be taken particularly seriously and will in almost all cases result in **disqualification for an indefinite period**. Other sexual offences of a lesser nature may also call into question a person's suitability to hold a PCV licence, but each case will be decided on the facts, taking into account such factors as whether the offence was an isolated one or part of a course of conduct, whether it was planned, whether it was committed in the course of a licence holder acting as a PCV driver, and the degree of risk of future offences.
28. A wide range of other offences might also call into question a person's suitability to hold a PCV licence. Serious convictions for Assault, Theft or the Supply of Drugs will raise doubts as to whether that person is an appropriate person to be driving a bus or coach with the opportunities such work provides for interface with the public. Factors such as those listed in the foregoing paragraph will be taken into account, when the Traffic Commissioner decides on the facts of the case whether to take action against the licence holder (and if so at what level).
29. Convictions for Unlawful Possession of Drugs will result in a hearing before the Traffic Commissioner and may result in **suspension** of the driving entitlement because of the effects that drugs can have on a person's driving ability.

F. PREVIOUS CONVICTIONS

30. Part D recommends guidelines to Traffic Commissioners in the event of disqualifications "imposed within the last ten years". There are however a number of scenarios in which Traffic Commissioners will have to take note of disqualifications imposed more than ten years previously.

31. Spent Convictions

- a. Under Section 7(3) of the Rehabilitation of Offenders Act 1974 a judicial authority may admit spent convictions if the authority is satisfied in view of relevant considerations that justice cannot be done except by admitting them. Guidance has been set out by Sedley J in **Adamson v Waveney District Council [1997] 2 All ER 898**.
- b. Spent convictions must not be allowed "speculatively" into evidence but only under specific conditions:
 - i. Spent convictions must relate to the issue to be decided (e.g. fitness of the individual to hold a licence).
 - ii. The spent convictions must be identified, and the applicant is entitled to make representations to persuade the judicial authority that the convictions are in fact not relevant for reasons of circumstance, age etc. This means that the call-up letter must identify apparently relevant spent convictions and inform the applicant of his right to make representations.
 - iii. The judicial authority makes the decision having in mind "not only the interests of the applicant as a person with spent convictions but also the public in whose interests these exceptional powers are exercised".