



## 2010 CHAPTER 2

### *Determination of applications*

#### **Determination of applications for operators' licences**

**12.—**(1) Subject to sections 10 and 47(2), on an application for a standard licence the Department shall consider—

- (a) whether the requirements of subsections (3) and (5) are satisfied, and
- (b) if it thinks fit, whether the requirements of subsection (6) are satisfied.

(2) Subject to sections 10 and 47(2), on an application for a restricted licence the Department shall consider—

- (a) whether the requirements of subsections (4) and (5) are satisfied, and
- (b) if it thinks fit, whether the requirements of subsection (6) are satisfied.

(3) For the requirements of this subsection to be satisfied the Department must be satisfied that the applicant fulfils the following requirements (as defined in regulations), namely that the applicant is—

- (a) of good repute,
- (b) of the appropriate financial standing, and
- (c) professionally competent;

and the Department shall determine whether or not that is the case in accordance with regulations.

(4) For the requirements of this subsection to be satisfied the applicant must not be unfit to hold an operator's licence by reason of—

- (a) any matter of which particulars are required to be given under section 7, or
- (b) any event required to be notified in accordance with section 8(1).

(5) For the requirements of this subsection to be satisfied it must be possible (taking into account the Department's powers under section 14(3) to issue a licence in terms that differ from those applied for) to issue a licence on the application in relation to which paragraphs (a) to (e) will apply—

- (a) there are satisfactory arrangements for securing that—
  - (i) Article 56 of the [Road Traffic \(Northern Ireland\) Order 1981 \(NI 1\)](#) (drivers' hours), and
  - (ii) the applicable Community rules, within the meaning of Part 6 of that Order,are complied with in the case of the vehicles used under the licence;
- (b) there are satisfactory arrangements for securing that the vehicles used under the licence are not overloaded;
- (c) there are satisfactory facilities and arrangements for maintaining the vehicles used under the licence in a fit and serviceable condition;
- (d) at least one place is specified in the licence as an operating centre of the licence-holder, and each place so specified is available and suitable for use as such an operating centre (disregarding any respect in which it may be unsuitable on environmental grounds);
- (e) the capacity of the place so specified (if there is only one) or of both or all the places so specified taken together (if there are more than one) is sufficient to provide an operating centre for all the vehicles used under the licence.

(6) For the requirements of this subsection to be satisfied the provision of such facilities and arrangements as are mentioned in subsection (5)(c) must not be prejudiced by reason of the applicant's having insufficient financial resources for that purpose.

(7) In considering whether any of the requirements of subsections (3) to (6) are satisfied, the Department shall have regard to any objection duly made under section 11(1)(a) in respect of the application.

(8) In considering whether the requirements of subsection (5) are satisfied, the Department may take into account any undertakings given by the applicant (or procured by the applicant to be given) for the purposes of the application, and may assume that those undertakings will be fulfilled.

(9) In considering whether subsection (5)(d) will apply in relation to a licence, the Department may take into account any conditions that could be attached to the licence under section 20(1)(a), and may assume that any conditions so attached will not be contravened.

(10) In considering whether subsection (5)(d) or (e) will apply in relation to a licence, the Department may take into account (if that is the case) that any proposed operating centre of the applicant would be used—

- (a) as an operating centre of the holders of other operators' licences as well as of the applicant; or
- (b) by the applicant or by other persons for purposes other than keeping vehicles used under the licence.

(11) If the Department determines that any of the requirements that it has taken into consideration in accordance with subsection (1) or (2) are not satisfied it shall refuse the application, but in any other case it shall, subject to sections 13 and 47(2), grant the application.

(12) As from such date as may be prescribed, subsection (4) shall have effect as if for the words “must not be unfit” there were substituted “must be professionally competent (within the meaning of regulations under subsection (3)) and not otherwise unfit”.

### **Determination where objections etc are made on environmental grounds**

**13.—**(1) This section applies to any application for an operator's licence in respect of which—

- (a) any objection is duly made under section 11(1)(b), or
- (b) any representations are duly made under section 11(4).

(2) The Department may refuse an application to which this section applies on the ground that, as respects any place which, if the licence were issued, would be an operating centre of the holder of the licence—

- (a) the parking of vehicles used under the licence at or in the vicinity of the place in question would cause adverse effects on environmental conditions in the vicinity of that place; or
- (b) the place in question would be unsuitable for use as an operating centre of the holder of the licence on other environmental grounds.

(3) The Department may not refuse an application for an operator's licence on the ground that any place would be unsuitable as mentioned in subsection (2) (b) if—

- (a) on the date the application was made, that place was already specified in an operator's licence as an operating centre of the holder of that licence, or
- (b) the applicant has produced to the Department a certificate in force in respect of that place under Article 83A or 83B of the [Planning \(Northern Ireland\) Order 1991 \(NI 11\)](#) stating that its use as an operating centre for vehicles used under any operator's licence is or would be lawful.

(4) Subsection (3) does not apply in relation to any place that, at the time the application is determined by the Department, is specified in an operator's licence as an operating centre of the holder of that licence.

(5) A place is not to be regarded for the purposes of paragraph (a) of subsection (3) as being specified in an operator's licence by reason only that it

forms part of a place so specified; and a place that was, on the date mentioned in that paragraph, a place specified in an operator's licence as mentioned in that paragraph shall be disregarded for the purposes of that paragraph if, on that date—

- (a) the operator's licence in which that place was specified was an interim licence issued under section 21; or
- (b) that place was so specified by virtue of an interim direction such as is mentioned in section 22; or
- (c) such conditions relating to—
  - (i) the exercise of the right of any person to appeal against a place being specified in an operator's licence, or
  - (ii) the review under section 34 of any decision so to specify a place, as may be prescribed were not satisfied in relation to that place.
- (6) Where in the case of any application for an operator's licence—
  - (a) the Department has power to refuse the application under subsection (2), and
  - (b) any place other than a place that will be unsuitable for use as an operating centre is mentioned in the particulars given by the applicant under section 7(4) as a proposed operating centre,

the Department may, instead of refusing the application, issue the licence but specify in it only such place or such places mentioned in those particulars as will not be unsuitable for use as an operating centre.

(7) For the purposes of subsection (6), a place will be unsuitable for use as an operating centre if the Department has power to refuse the application under subsection (2) in consequence of the proposed use of that place as an operating centre.

### **Issue of operators' licences**

**14.—**(1) Subject to subsection (2) and to sections 13(6), 20 and 47(2), on granting an application for an operator's licence the Department shall issue that licence in the terms applied for.

(2) If the Department has determined that any of the requirements of subsection (5) or (6) of section 12 that it has taken into consideration in accordance with subsection (1) or (as the case may be) (2) of that section would not be satisfied unless it were to exercise any of its powers under subsection (3), it shall exercise those powers accordingly.

(3) The Department may issue the licence in terms that differ from the terms applied for in any of the following respects—

- (a) more or fewer motor vehicles are specified in the licence;

- (b) different motor vehicles are specified in it;
- (c) it includes a provision such as is mentioned in section 4(2);
- (d) it includes a provision such as is mentioned in section 5(1)(b) or (2)(b);
- (e) higher or lower maximum numbers are specified in it under section 5;
- (f) fewer places are specified in it as operating centres of the licence-holder.

(4) Any undertakings taken into account by the Department under section 12(8) that it considers to be material to the granting of the application shall be recorded in the licence issued.

(5) A statement shall appear on the face of every operator's licence indicating whether it is a standard licence or a restricted licence.

(6) A statement shall appear on the face of every standard licence indicating whether it covers both national and international transport operations or national transport operations only.

#### **Duration of operators' licences**

**15.—**(1) The date on which an operator's licence is to come into force shall be specified in the licence.

(2) Subject to its revocation or other termination under any provision of this Act or any other statutory provision, an operator's licence (other than an interim licence issued under section 21) shall continue in force indefinitely.

(3) If the holder of an operator's licence requests the Department to terminate it at any time, the Department shall, subject to subsection (4), comply with the request.

(4) The Department may refuse to comply with the request if it is considering giving a direction in respect of the licence under section 23 or 24.

(5) An operator's licence held by an individual terminates if—

- (a) the individual dies, or
- (b) the individual becomes a patient within the meaning of Article 2(2) of the [Mental Health \(Northern Ireland\) Order 1986 \(NI 4\)](#).