



PASSENGER TRANSPORT GOVERNING POLICY

This policy is issued by the Committee for the Environment & Infrastructure in accordance with the Public Transport (Guernsey) Law, 1984 and the Public Transport Ordinance, 1986 (as amended).

Policy relating to public service vehicle licences and road service licences

1 Introduction

- 1.1 In order to operate a road service – that is, a service of carriage of passengers for hire or payment – a person needs a road service licence ("**RSL**"). A vehicle other than a hired vehicle used to provide a road service is called a public service vehicle, and it is prohibited to cause or permit a vehicle to be used as a public service vehicle without a public service vehicle licence ("**PSVL**").
- 1.2 This guidance sets out the policy of the Issuing Authority in relation to the following matters:
- applications for the grant and renewal of PSVLs
 - the revocation, suspension and variation of PSVLs
 - applications for the grant of RSLs
 - the revocation, suspension and variation of RSLs

It also addresses appeals against decisions of the Issuing Authority relating to these matters.

References in this guidance to "**Issuing Authority**" are to the staff acting under delegated authority from the Committee *for the* Environment & Infrastructure (the Committee). For clarity, it should be understood that the Issuing Authority is authorised by law to rule on matters relating to RSLs and PSVLs and that the Issuing Authority is the decision making body. However, it must be noted that Driver and Vehicle Licensing, a service area of the Committee for the Environment and Infrastructure, is delegated to carry out the functions outlined within this document where the term "Issuing Authority" is used.

For simplicity, all gender references are given in the male context and should be construed as referring to both male and female licence holders.

- 1.3 It is the general duty of the Issuing Authority under the Public Transport (Guernsey) Law, 1984 ("**the Law**") to be responsible for ensuring that, so far as practicable, there are at all times available in the Island sufficient, efficient and safe systems of public transport. It follows that the Issuing Authority will be seeking to safeguard the public safety when it performs its

functions and duties, including the making of decisions, under the Public Transport Ordinance, 1986 ("the Ordinance").

- 1.4 It should be noted that section 7 of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002, does not apply in respect of any occupation or work connected with, in the employment of, or undertaken by the holder of, or an applicant for a road service licence under the Ordinance. Therefore, applicants and existing permit holders have an obligation to reveal spent convictions. The Issuing Authority will be guided by the provisions of the Act in assessing any reasonable and proportionate measures it might take to protect public safety.
- 1.5 It is a condition attached to all RSLs issued by the Issuing Authority (including those which are subject to a suspension) that the holder notifies the Issuing Authority if he is convicted of any criminal offence in any recognised court of law, whether in Guernsey or any other jurisdiction during the period of validity of the permit. Such notification must be given within fourteen days of a conviction. PSVL holders must make a declaration regarding any criminal record when applying for annual renewal of the licence.
- 1.6 **The Issuing Authority shall endeavour at all times to act reasonably, proportionately and consistently. This Guidance is intended to contribute to that aim, but is only to be used as a starting point. Each case will be dealt with on its individual merits and this Guidance is not intended to be read prescriptively or narrowly; the Issuing Authority retains its discretion to make judgements as it sees right and fit and therefore to depart from this Guidance if its judgement deems it appropriate in the circumstances. This Guidance does not constitute legal advice.**
- 1.7 A PSVL holder whose status as fit and proper is questioned by the Issuing Authority will be given reasonable notice to make representations prior to any final decision on the matter. Similarly, should the Issuing Authority raise a concern about the operation of a RSL, then the holder will be given sufficient notice to make representations prior to any final decision on the matter.
- 1.8 As a general guideline, any period for which a PSVL or an RSL in issue is withheld for up to two years will be described as a suspension of that licence. Should the Issuing Authority decide that a longer period is required, then revocation of the licence will normally be imposed.
- 1.9 Should a PSVL or RSL be suspended then it will be reinstated at the expiration of the period of suspension unless other factors make this inappropriate; should a PSVL or RSL be revoked then it can only be restored after consideration of a new application.

2 Applications for the grant or renewal of a PSVL

- 2.1 Sections 6 and 7 of the Ordinance provide that a person may apply to the Issuing Authority for a PSVL and, provided that the application is in such form and accompanied by such information as the Issuing Authority requires, the Issuing Authority shall ordinarily determine the application.

- 2.2 Section 7 provides that the Issuing Authority may grant the application, refuse it, or grant it subject to conditions.
- 2.3 Section 8 provides for a limit to be placed on the number of PSVLs that may be granted to any applicant, and section 9 provides that a PSVL may be a licence of any of the categories set out in Part 1 of Schedule 1 to the Ordinance.
- 2.4 Section 10 provides that, subject to section 11 (which deals with the period of validity of PSVLs), the Issuing Authority shall not grant a PSVL unless the conditions set out there are complied with. It will be noticed that the Issuing Authority is not required to grant a PSVL if the conditions are complied with; rather, it is required to refuse to grant a PSVL if the conditions are not complied with. In other words, in determining an application for the grant of a PSVL, and for the renewal of a PSVL under section 13, the Issuing Authority may take into account other relevant considerations.
- 2.5 In addition to any other factors that the Issuing Authority considers relevant in any particular case, the Issuing Authority will consider, when determining such an application, whether the applicant is a fit and proper person to hold a PSVL ("**the fit and proper person test**"). Guidance on how the Issuing Authority will apply that test is set out below in the Annex to this document.

3 Applications for the grant of an RSL

- 3.1 Sections 19 and 20 of the Ordinance provide that a person may apply to the Issuing Authority for a RSL and, provided that the application is in such form and accompanied by such information as the Issuing Authority requires, the Issuing Authority shall ordinarily determine the application.
- 3.2 Section 20 provides that the Issuing Authority may grant the application, refuse it, or grant it subject to conditions.
- 3.3 Section 21 sets out the list of factors that the Issuing Authority must take into account when considering whether or not to grant an application for an RSL. Additionally, the Issuing Authority will consider the fit and proper person test.

4 Procedure on consideration of an application for the grant of a PSVL or an RSL

- 4.1 On receipt of a properly completed application form, officers within the Issuing Authority will scrutinise the submission and will assess if the licence can be issued. This process will involve checking the applicant's criminal record.
- 4.2 If there is a question as to whether or not the licence should be issued, then a report with recommendation(s) is prepared and presented to the Issuing Authority for consideration. Following the procedure as outlined in paragraphs x below, the Issuing Authority may agree to the issue of the licence, reject the issue of the licence, authorise the issue of the licence with attaching conditions, or ask for further information before making a decision.

4.3 Should the Issuing Authority have doubts about approving an application for a PSVL or RSL (as submitted by a non holder of a PSVL / RSL) without having met with the applicant, then the decision of the Issuing Authority shall ordinarily be deferred until such time as the applicant is able to make representations in the manner set out above. The applicant may be accompanied by a friend or advisor in any personal appearance before the Issuing Authority

5 The revocation, suspension and variation of PSVLs

5.1 Section 16 of the Ordinance provides as follows -

Revocation, suspension, etc., of public service vehicle licences.

16. (1) *[The Issuing Authority] may at any time revoke, suspend or vary a public service vehicle licence and shall do so if in the opinion of [the Authority] the terms and conditions of the licence are not being complied with or the owner of the motor vehicle in respect of which the public service vehicle licence was granted is not, by reason of his conduct, a fit and proper person to hold such a licence*

(2) The power vested in the Issuing Authority under the provisions of the last preceding subsection to vary a public service vehicle licence shall include power to vary any conditions attached to any such licence.

5.2 It will be seen that the Issuing Authority must revoke, suspend or vary a PSVL in two circumstances: first, if in its opinion, its terms and conditions are not being complied with, and second if, in its opinion, the owner of the relevant vehicle does not pass the fit and proper person test. In any event, even if the Issuing Authority is not required to revoke, suspend or vary a licence, it retains the discretion to do so.

6 The revocation, suspension and variation of RSLs

6.1 Section 24 of the Ordinance provides that the Issuing Authority must revoke, suspend or vary an RSL if in its opinion the terms and conditions of the licence have not been complied with. There is no fit and proper person test under the mandatory requirement of section 24, but even if the Issuing Authority is not required to revoke, suspend or vary a licence, it retains the discretion to do so and will consider the matter of fit and proper in making any decisions.

7 Procedure where the Issuing Authority considers that (a) an applicant for or holder of a PSVL may not be a fit and proper person test or (b) the terms and conditions of a PSVL or RSL are not being complied with

7.1 As soon as possible after a matter has been brought to the attention of the Issuing Authority (which constitutes, in the Authority's opinion, reasonable grounds for establishing that an individual may not be a "fit and proper person" or that the conditions attaching to a RSL are not being complied with) the Authority will make a decision as to what decision to take. The Issuing Authority will refer to the matters set out in the Annex when considering whether an individual is a "fit and proper person".

- 7.2 The decision may be a sanction from any (or a combination) of the following measures as deemed to be appropriate in the individual circumstances:
1. Verbal warning;
 2. Written warning;
 3. Variation of conditions attached to a permit;
 4. Suspension (normally of a period of between one month up to two years); and
 5. Revocation
- 7.3 When considering which sanctions are appropriate, the Issuing Authority will, if appropriate, refer to the matters set out in the Annex, and will take all factors and circumstances into account before deciding any sanction.
- 7.4 In the event that the Issuing Authority concludes that the individual is not a "fit and proper person" it is highly likely that the Issuing Authority will conclude that that individual's PSVL be varied, suspended or revoked. In the event that the Issuing Authority concludes the individual is "fit and proper" or that conditions attaching to a PSVL or RSL have been infringed, the Issuing Authority may still find it appropriate, in light of the licence holder's conduct, to issue a verbal or written warning.
- 7.5 Where the decision in respect of any matter is the suspension or revocation of a PSVL or RSL, or the imposition or variation of conditions attaching to such a licence, the Issuing Authority will proceed as follows:
- (a) Without prejudice to paragraph (b), the licence holder will be invited to make representations to the Issuing Authority prior to it making any decision. The licence holder will be given notice of not less than ten working days for making his representations, unless a shorter period of notice is mutually agreeable or deemed by the Issuing Authority to be necessary and in the public interest. He may choose to be accompanied by a friend or advisor when making representations to the Issuing Authority.
 - (b) If it is the opinion of the Issuing Authority that the particular circumstances justify an immediate suspension of a PSVL or RSL in issue, then it shall sanction such a suspension. In such cases, the period of suspension shall be considered on a case by case basis but shall be for no more than one month and may not be renewed without consideration by the Issuing Authority, as set out in paragraph (a) above. In such cases, the suspension is a neutral act which is, necessary whilst further investigation is carried out.
 - (c) Should there be grounds for believing that a licence holder may have committed some act or offence that, should it be proven, would reasonably lead the Issuing Authority to conclude that the licence holder is not a fit and proper person, then the Issuing Authority may suspend the licence pending the conclusion of any investigations. Suspension in such cases will ordinarily be for no more than thirty days and may be renewed until such time as the matter is concluded.

8 Appeals

8.1 *Appealing a decision of Issuing Authority in respect of an application for a PSVL or RSL*

8.2 If the Issuing Authority decides to refuse an application, the applicant will be afforded the opportunity to appear before the Committee prior to any decision being made – in accordance with the process outlined in the paragraph above. Should the Committee subsequently refuse the application, the applicant may, within thirty days following service on him of notice of the decision, appeal to the Royal Court by way of a summons served on the President of the Committee (section 53 of the Ordinance). The grounds available for appealing the decision of the Committee are either that the Issuing Authority has acted *ultra vires* (beyond its powers) or that the decision was an unreasonable exercise of its powers.

8.3 *Appealing a decision of Committee in respect of a PSVL or RSL in issue*

8.4 Should the holder of a PSVL or RSL be aggrieved at a decision of the Issuing Authority to suspend or revoke the licence, or to vary the conditions attaching to it, then he/she may appeal to the Committee.

8.5 Should the holder of a PSVL or RSL be aggrieved at a decision of the Committee to suspend or revoke the licence, or to vary the conditions attaching to it, then he/she may appeal within thirty days following service on him of notice of the decision, appeal to the Royal Court. The grounds available for appealing the decision of the Issuing Authority are either that the Issuing Authority has acted *ultra vires* or that the decision was an unreasonable exercise of its powers.

8.6 If, following the original decision of the Issuing Authority, the appellant is able to present new or additional evidence to demonstrate that the original decision was flawed or misplaced, then he may submit a new application which the Issuing Authority will, in ordinary circumstances, determine.

8.7 It should be noted that the Issuing Authority is the sole body authorised in law to make decisions regarding the granting, suspension, revocation and variation of conditions of a PSVL or RSL. All decisions of the Committee in respect of such licences shall remain in force until overturned or altered by the Committee after due process.

9 Correspondence

9.1 Written correspondence to an applicant for, or holder of, a PSVL or RSL will ordinarily be sent by standard class mail to the last known or given address for that person that the Issuing Authority has retained in its records.

9.2 In the following cases correspondence will ordinarily be sent by recorded delivery to the last known or given address that the Issuing Authority has retained in its records:

- When giving notice to an individual of his / her right to attend a Committee meeting.
- When informing an individual of a decision of the Committee.

ANNEX

The Issuing Authority's application of the fit and proper person test

- 1.1 In addition to such other factors as the Issuing Authority considers relevant in any particular case, in each case the Issuing Authority will take account of the licence holder's criminal record when considering the fit and proper person test. In particular, the Issuing Authority will take into account whether he has a criminal record in respect of (a) motoring offences and (b) other offences and may take police interviews and cautions into account when making its decisions.

Criminal record in respect of serious motoring offences

- 1.2 A serious motoring offence is considered to be any motoring conviction that will ordinarily attract a driving disqualification of six months or more.
- 1.3 An application from a person convicted of a serious motoring offence is unlikely to be successful unless, following completion of any driving licence disqualification period and notwithstanding other matters that may be pertinent, the individual has not been convicted of any motoring offences for a period of one year commencing from the date of the grant of a new driving licence.
- 1.4 Exceptionally (depending on the seriousness and circumstances of the offence) an isolated conviction may not necessarily result in an application for a PSVL being refused as it may be deemed, for example, that a written warning is more appropriate in individual circumstances.
- 1.5 Should two or more serious convictions be incurred prior to the date of a first application being made, the application is unlikely to be successful unless, following completion of any driving licence disqualification period and notwithstanding other matters that may be pertinent, the individual has not been convicted of any motoring offences for a period of three years commencing from the date of the grant of a new driving licence.
- 1.6 It should be noted that convictions for motoring offences are a serious concern for the Issuing Authority in respect of individuals engaged as drivers for public service vehicles. The Issuing Authority may take a more measured view of the seriousness of motoring offences in respect of persons solely engaged in the business of running or organising the operation of public service vehicles.
- 1.8 The Issuing Authority will take all factors and circumstances into account in consideration of any suspension or revocation of a PSVL in respect of a conviction for a serious motoring offence.
- 1.9 Criminal record in respect of driving whilst not insured
- 1.10 An isolated incident will not necessarily mean an unsuccessful application provided at least one year free of conviction (after the expiration of any driving disqualification) has elapsed. Should a PSVL holder be convicted of driving whilst not insured then the Issuing Authority will

take all factors into account in deciding what action is appropriate. Whilst the Issuing Authority takes a very serious view of convictions relating to insurance in respect of *drivers* of public service vehicles, it may take a more measured stance regarding persons solely engaged in the business of running or organising the operation of public service vehicles.

- 1.11 It may be that a PSVL holder is convicted of driving without valid insurance in the course of carrying fare paying passengers. In such cases the Issuing Authority will be minded to impose such sanctions as are specified in respect of a holder's *permit to drive a public service vehicle*. Subsequently, it may be the case that, having had his / her *permit to drive a public service vehicle* suspended or revoked, the PSVL holder wishes to continue in the business of operating public service vehicles. Depending upon the circumstances of individual cases, the Issuing Authority will take a measured view on whether or not the holder of a PSVL should be permitted to continue to *operate* the licence.

Criminal record in respect of other motoring offences

- 1.12 Examples of less serious motoring offences are speeding, bald tyres, registration infractions and other offences that will ordinarily incur a driving disqualification of less than six months. As in the case of serious motoring offences, the Issuing Authority is especially concerned that *drivers* of public service vehicles should not present a poor record of less serious motoring offences.
- 1.13 Should an applicant for a PSVL declare a less serious motoring offence then it is unlikely that the licence would be refused, but he may be issued with a verbal or written warning as to future conduct.
- 1.14 Should the holder of a PSVL commit a less serious motoring offence, then, depending on the circumstances and nature of the offence, he will ordinarily be issued with a verbal or written warning.

Criminal record in respect of a series of less serious motoring offences

- 1.15 A series of less serious motoring offences is considered to be three or more motoring convictions as described in 1.8 above, not including parking offences, committed within any three year period.
- 1.16 Should an applicant declare a series of less serious motoring offences then it is possible that a PSVL would be refused. A new application is unlikely to be successful unless a period of at least twelve months has elapsed since the most recent date of conviction.
- 1.17 Should a PSVL holder declare a series of less serious motoring offences, the Issuing Authority will take a measured view as to the extent to which the health and safety of the travelling public may be impaired. Should a suspension or revocation be considered appropriate, it will commence from the date that any driving licence disqualification is imposed by the courts.

Criminal record in respect of other offences

- 1.16 In considering what might constitute “not fit and proper” in the context of a criminal record other than for driving offences, the Issuing Authority will take a view on the nature and seriousness of any offence that is committed.

An offence of driving while under the influence of drink or drugs

- 1.17 It is recognised that a person who is convicted of driving while under the influence of drink or drugs will inevitably be disqualified from driving for a period of time. An application from a person convicted of an offence while driving under the influence of drink or drugs is unlikely to be successful until at least one year has passed since the restoration of that person’s driving licence. Should, for whatever reason, a person be convicted of such an offence but not disqualified from driving, then the Issuing Authority will take a measured view in regard to any application in order to protect public safety.
- 1.18 In these circumstances, the Issuing Authority will take account of all factors in considering whether or not the holder of a PSVL will be permitted to continue to *operate* a PSVL following a conviction for driving while under the influence of drink or drugs.
- 1.19 A second similar offence will normally result in the PSVL being revoked.
- 1.20 Disqualification for driving while under the influence of drink or drugs when carrying a fare paying passenger will ordinarily result in sanctions being levied in respect of the holder’s *permit* to drive a public service vehicle. The Issuing Authority will take a measured view in assessing whether or not the holder of a PSVL is a fit and proper person to continue in the business of running or operating a PSVL following such a conviction.
- 1.21 An application for a PSVL is unlikely to be successful from a person undertaking treatment for alcohol or drug dependency until one year after successful completion of the treatment programme.

An offence in relation to violence

- 1.22 The Issuing Authority may consider cautions or police interviews in this context. The Issuing Authority will exercise judgement in ascertaining the relevance and seriousness of offences. In this respect, it will take specific account of the impact that any offence might have for impairing public safety should the PSVL holder continue to operate a public service vehicle. In making this judgement, the Issuing Authority will take into account the role of the individual as an operator of a service; his / her role as a *driver* will be considered in accordance with stipulations made in this respect.
- 1.23 An isolated conviction in respect of being drunk and disorderly will not necessarily mean an unsuccessful application, but repeat offences may be indicative of a problem requiring a medical report.

An offence in relation to fraud, dishonesty or possession of controlled substances

- 1.24 Again, the Issuing Authority may consider cautions or police interviews in this context and will exercise judgement in ascertaining the relevance and seriousness of offences. In this respect, it will take specific account of the impact that any offence might have for impairing public safety should the holder of a PSVL continue to operate a public service vehicle.
- 1.25 As a general guideline, the Issuing Authority will consider imposing a minimum twelve month suspension in such cases.
- 1.26 Should a PSVL holder be convicted of possession of controlled substances with intent to supply then, depending upon the circumstances of the case, the Issuing Authority will be minded to revoke the PSVL and an application is unlikely to be successful before a minimum period of three years has elapsed following conviction.
- 1.27 The Issuing Authority will not normally give a favourable consideration for an application from an individual who has been convicted of supplying a controlled substance until at least three years have elapsed since release from any sentence imposed for the offence.

An offence relating to sexual behaviour

- 1.28 The Issuing Authority may consider cautions or police interviews in this context. The Issuing Authority will exercise judgement in ascertaining the relevance and seriousness of any offences. In this respect, it will take specific account of the impact that any offence might have for impairing public safety should the PSVL holder continue to operate a public service vehicle.

As a general guideline, a person whose name is retained on the sexual offenders' register will not be permitted to hold a PSVL. An application may be favourably considered by the Issuing Authority three years after a person's name has been removed from the register, provided that person has not incurred any other similar convictions.

Reasons other than a criminal record that may be considered for the purposes of the fit and proper person test

- 1.29 The following are examples only and do not constitute an exhaustive list.

Persistently infringing the terms and conditions attaching to the licence, or being the subject of repeated complaints regarding the exercise of the licence

- 1.30 In consideration of the foregoing the Issuing Authority will exercise discretion in determining any appropriate and proportionate action that it may deem necessary to take. There is a recognition that technical PSVL condition infractions can and will occur from time to time despite the best endeavours of the PSVL holder and, in such cases, the Issuing Authority will not seek to take action. This may include such matters as pending or unjustified complaints, difficulties in meeting vehicle standards without fault to the operator, etc.

Being served notice under any relevant statute, including but not limited to legislation dealing with Health and Safety, Trading Standards, Consumer Protection and Road Traffic and Transport

- 1.31 The Issuing Authority will take into account any reported infractions by the PSVL holder in respect of relevant statutes, practices and legislation as outlined (but not limited to) above.
- 1.32 In this context, the Issuing Authority will seek to take appropriate and proportionate actions as circumstances may indicate.

Demonstrating a poor approach to business management, a lack of business acumen and / or a record of poor financial control, failure to meet legitimate debts, bankruptcy, etc. Disqualification as a Director or other office of a company.

- 1.33 In consideration of the foregoing the Issuing Authority will exercise discretion in considering whether or not to issue a licence and any appropriate and proportionate action that it may deem necessary to take in respect of the holder of a licence. The Issuing Authority is concerned to ensure that individuals and organisations that hold RSLs / PSVLs are evidently up-standing members of the community and do not present a record of poor business performance. There will be particular concern if an applicant has ever been disqualified from acting in the role of Director or other senior office of a company.

APPENDIX ONE

The Public Transport Ordinance, 1986, as amended

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