



Train Driving Licences and Certificates Regulations 2010: Suspension and withdrawal of licences

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Scope

1. This guidance covers **licence** suspension and withdrawal only, and is aimed primarily at train operators. Guidance covering the suspension or withdrawal of a certificate, and any subsequent appeal, is provided in the main operator guidance document (hyperlink to be inserted once available; this guidance is currently under development).

Background

2. Train driving licences are normally valid for 10 years. To ensure that drivers continue to maintain the required standards throughout the validity period of a licence, there are legal obligations to ensure that the conditions required for its issue continue to be met. This means that drivers and their employers are responsible for ensuring that certain specified requirements continue to be met in order that fitness to drive can be maintained – these include:
 - passing medicals at set times (at least every 3 years up to age 55, annually after that);
 - maintaining general competence - which is monitored by the train operator; and
 - undertaking revised / new training where necessary.
3. Under the Train Driving Licences and Certificates Regulations 2010 (TDLCR), train operators must have systems in place that monitor performance to ensure that their drivers continue to meet the standards laid down in those Regulations. If a train operator believes that the fitness or competence of one of their drivers does not meet the standards required, they are bound to immediately take any necessary action, which may include:
 - ensuring the driver undergoes appropriate medical / occupational psychological examination;
 - ensuring the driver undergoes appropriate competence training / examination;
 - informing ORR of anything which may affect the validity of a licence, so that we can consider whether it is appropriate to suspend or withdraw that licence; and
 - suspending or withdrawing the driver's train driving certificate.
4. There are a number of regulations in the TDLCR which set out the duties for ORR, train operators and train drivers that are relevant to the validity of licences – these are outlined below.

What are the statutory duties for ORR / Train Operators / Train Drivers that are relevant to suspension and withdrawal?

5. The table below sets out the key, relevant requirements in TDLCR.

Regulation	Applies to	Wording
17(1)	Train operator	“A railway undertaking or infrastructure manager must have a system for monitoring train drivers employed by them to check that the requirements of these Regulations which apply to them are adhered to.”
18(1)(a)	ORR	“Without prejudice to regulation 21, if the ORR considers that the holder of a train driving licence issued by the ORR no longer satisfies a condition required for the holding of it, or decides to suspend or withdraw the licence pursuant to paragraph (3), the ORR must suspend or withdraw the licence.”
21(1)	ORR	“If the ORR considers that a train driver is a serious threat to the safety of the railways it must immediately take any necessary action.”
24(1)	ORR	“The ORR must have and keep up to date a register of train driving licences issued by it or on its behalf, and in particular the register should include details of any updating, renewal, amendment, expiry, suspension or withdrawal of any such licence, and record any loss, theft or destruction of any such licence.”
27	Train operator	“Railway undertakings and infrastructure managers must, upon request, provide to the ORR any information relating to train driving certificates issued by them or any other functions carried out by them under these Regulations”
35(1)(a)	Driver	“A person concerned (“the appellant”) may appeal to the Secretary of State against a decision of the ORR referred to in paragraph (2).” (This refers to ORR suspending, withdrawing, prohibiting a person from driving a train in GB, or not granting an application for a licence, its update or renewal, or a duplicate)

6. Only ORR can suspend or withdraw licences that we have issued - it is the responsibility of the train operator to supply all relevant information concerning a driver to allow us to make our decision. The licence remains the property of the driver until such time as a decision to suspend or withdraw is made. Then, if we suspend or withdraw the licence, the holder must surrender it to us as required by regulation 18(2). If the licence has been issued by another safety authority only they can suspend or withdraw it.

7. Additionally, train operators should make their drivers aware that they have a duty under regulation 17(3) of TDLCR to immediately inform their employer if the state of their health calls into question their fitness to drive trains. Our guidance document for drivers includes more on the requirements of drivers under the TDLCR (hyperlink to be inserted once available; this guidance is currently under development).
8. Train operators must update ORR in certain circumstances as the information and evidence provided might lead us to consider whether suspension or withdrawal of a licence may be appropriate. This applies even if the driver no longer works for that train operator or has been moved to other duties. Paragraphs 12 to 14 provide more detail.
9. To assist cases where licence suspension or withdrawal needs to be considered, we have developed a [pro-forma](#) which is intended to simplify and speed up the flow of information between train operators and ORR. This can be used to help gather the necessary information and supporting evidence and can be found on the ORR website at.
10. The guidance for train operators (in development) includes further information on how train operators need to keep ORR informed of more general or routine changes so that we can keep our register up to date and re-issue licences where appropriate. The guide for drivers (in development) includes the type of information drivers are responsible for passing on to their employer relevant to their licence.

Which requirements have to be maintained in order to keep a licence valid?

11. In order to maintain the validity of a licence, both the holder of the licence and their employer have ongoing responsibilities to ensure that the driver:
 - passes medical examinations at least every three years in accordance with schedule 1 of TDLCR (up to the age of 55);
 - passes medical examinations annually in accordance with schedule 1 of TDLCR (age 56 and above);
 - informs their employer if they believe that their health may affect their ability to drive;
 - maintains general skills and professional knowledge and requirements as outlined in Schedule 3 of TDLCR, undertaking training / examination as necessary;

- this includes requirements in relation to a driver's work, the work environment, the driver's role and responsibilities such as:
 - knowledge of the general thrust of legislation and rules applicable to rail operation and safety;
 - understanding of the specific requirements and professional demands (of their work as a train driver);
 - understanding behaviours which are compatible with safety critical responsibilities (medication, alcohol, drugs, illness, stress, fatigue etc.);
 - understanding the importance of being precise in carrying out duties and in working methods;
 - understanding occupational health and safety and maintaining knowledge of behavioural skills and principles (stress management, extreme situations etc.).

Train operators should refer to schedule 3 of the TDLCR for the full requirements.

What type of issues might affect licence validity and how should they be raised?

12. Train operators are required, as part of their monitoring arrangements under regulation 17(1) to check that the requirements of TDLCR are adhered to in relation to their drivers. Regulation 17(2) requires train operators to inform ORR if the results of that monitoring give rise to any questions about a driver continuing to be able to satisfy all of the conditions for holding it. As explained, these conditions need to be maintained in order to assure the ongoing validity of a licence.
13. Whilst ORR needs to be informed about routine information such as:
 - Resignation of a driver
 - Retirement of a driver
 - Death of a driver
 - An individual voluntarily leaving the driving grade
 - Periods of more than 3 month's work incapacity

so that the register we are required to keep under regulation 24 of TDLCR can be kept up to date, these type of updates can be communicated via email. Following

receipt of the information we will update the register as necessary and consider what the update means in relation to the status of the licence. Other information, such as:

- Involvement in an accident / Signal Passed at Danger / operational incident
- Issues with/incidents involving drugs or alcohol
- Driver issues that emerge from Competency Management System / Safety Management System monitoring arrangements
- Failed medical or psychological assessment (or missed appointments)
- Misconduct / discipline issues
- Instances where a train operator has refused to grant, update or renew a certificate or has suspended or withdrawn one

is more serious by nature, and should be communicated, with full details, as soon as possible to ORR through its pro forma, regardless of the employment status of the driver. This type of information *might* lead us to consider whether suspension or withdrawal is appropriate and it is important that we receive the information promptly to lower the risk of a driver moving on to another train operator whilst questions around licence validity remain.

14. Information relevant to licence validity might also come to light through ORR's inspections. In cases where ORR considers that a train driver is a serious threat to the safety of the railway we must immediately take any necessary action, such as suspending or withdrawing the licence and prohibiting the driver from driving a train in Great Britain.

What kind of information and evidence do ORR require in order to consider the potential suspension or withdrawal of a licence?

15. ORR's pro forma sets out the information and supporting evidence we will consider which can be broken down into a number of headings as explained below, depending on the circumstances, and as set out in TDLCR:

(a) Driver has ceased employment – regulation 16(1)

For resignations following an operational incident or drugs and alcohol test:

- Date of resignation

- Date last drove a train
- New train operator/employer (if known)
- Information about any issues that may affect future validity of licence

This may be followed by the completion of the ORR pro-forma, depending on the circumstances of the resignation

For dismissals:

- Initial email with all relevant details such as the date and reason for the dismissal
- Date last drove a train

This may be followed by the completion of the ORR pro-forma, depending on the circumstances of the dismissal

(b) Competence / safety issues – regulation 17(2)

- Notification of issue by train operator, inspector or third party
- A clear written statement from the train operator as to why the driver's competence has been brought into question and any conclusion reached
- Date of any removal from driving duties
- Date last drove a train
- Any communications between the train operator and driver (letters, meetings, notes from hearings etc.)
- Results of any competency assessment / re-assessment
- Investigation report(s) of any safety incident(s)
- Details of any development plans (including monitoring of same)

(c) Medical issues – regulation 17(4)

- Details of failed assessment/operator decision on fitness to drive
- Evidence of the relevant condition
- Details of any missed scheduled appointments

- Date last drove a train

(d) Incapacity to work – regulation 17(5)

- Details of any period of work incapacity of 3 months or more
- Date last drove a train

Although TDLCR requires this, we recognise that drivers may be incapacitated from time to time and will then return to driving. Notification allows ORR to monitor the position and we may need to take action in respect of the licence if the driver is away from driving duties for 12 months or more (see below). In the case of an absence of twelve months or more due to maternity leave the licence will not be suspended but the employer should ensure that the driver is required to demonstrate competence through an examination check on return to work.

(e) Retirement

- Date of retirement
- Date last drove a train (if different)

In cases of retirement, licences will automatically be suspended after 12 months of inactivity as it will be assumed that certain competencies will have lapsed because the required frequency of examination set out in TDLCR cannot have been satisfied.

(f) Death

Where ORR is notified that a licence holding driver has died, licences will be automatically withdrawn.

For a summary of the basic information required, please see Annex 01

How does ORR reach a decision regarding potential suspension or withdrawal of a licence?

16. Our decisions are:

- guided by the framework outlined in the TDLCR and the requirements summarised at paragraph 11 of this guidance;
- reached following the application of a standardised process (see later);
- evidence based; and

- considered on a case-by-case basis but with reference to previous, similar cases where appropriate.

Broadly, cases are likely to fall into three main areas – medical fitness, issues around competency, issues around professional knowledge and requirements (i.e. where a driver might have acted in contrary to them). In common with the rail industry - where it may affect driving performance or safety, ORR has a zero-tolerance policy towards the use of drugs or consumption of alcohol. When presented with clear evidence of contravention of this policy, ORR will withdraw the relevant licence (unless an appeal is pending).

17. Our expectation is that a train operator will provide clear evidence to allow us to consider whether licence suspension or withdrawal is appropriate. Where information is missing or unclear we will go back to the train operator and, in some cases, might ask the driver to provide relevant information. However, we will not carry out our own investigation of a driver or the circumstances, nor re-assess the competence of any driver whose licence may be under review.
18. Where we think it may be necessary, we may seek specialist advice in order to help us make an informed decision, for example to consider whether a driver may ever regain full fitness to drive following a medical issue.
19. The process we follow when considering the suspension or withdrawal of a licence can be summarised as follows:
 - ORR informed of an issue(s) which could lead to licence suspension or withdrawal;
 - ORR requests the information and supporting evidence from the train operator;
 - ORR's casework officer reviews the information and supporting evidence, requesting clarifications or additional information from the train operator (and/or the driver) as required;
 - a case team is formed, including representatives from ORR's legal, policy and specialist or operational teams, who will consider the evidence before making a recommendation to suspend, withdraw or take no action;
 - the recommendation is reviewed and, if agreed, signed-off by a senior manager within ORR;
 - a letter setting out the decision (see later) will be sent to the driver and their most recent employer.

For a detailed summary of the suspension / withdrawal process, please see Annex 02.

20. Each case is considered individually but as a broad, general guide:

Suspension may be appropriate when there is temporary loss of validity of a licence and there is the possibility of validity being regained.

Withdrawal may be appropriate when there is a loss of validity, and there is no realistic prospect of fitness or competence being regained. It can also occur where a licence has been suspended for more than 12 months and no attempt has been made to regain fitness or competence, or when attempts have been made, and they were unsuccessful.

What happens with the potential suspension or withdrawal of licences issued by other safety authorities?

21. In line with regulation 19 of TDLCR, if we consider it is necessary to suspend or withdraw a licence that was issued by another safety authority, or the Department for Infrastructure (DI) we will:

- inform the safety authority or the DI as appropriate;
- inform the safety authority or the DI of the reasons for our concerns;
- ask for a review of the relevant driver's suitability to hold a licence, or request that the licence be suspended or withdrawn;
- notify the European Commission, other safety authorities, DI, and the Intergovernmental Commission of the request.

Following on from the above and pending the outcome of the request to suspend or withdraw, or any other conclusion, we may prohibit the driver in question from driving a train in Great Britain.

How are ORR's decisions communicated to the relevant parties?

22. Once we have made a decision to suspend or withdraw a licence, the driver will be informed of our decision in a letter containing the following:

Suspension

- The reason(s) for the suspension
- Details of the relevant condition(s) that is/are no longer satisfied
- Details of why the driver must return their licence and where to return it to
- What the driver would have to do to regain full validity of the licence
- What evidence ORR would require to lift the suspension and return or re-issue the licence to the driver
- Details of how to appeal against the decision

Withdrawal

- The reason(s) for the withdrawal
- Details of the relevant condition(s) that is/are no longer satisfied
- Details of why the driver must return their licence and where to return it to
- Details of how to appeal against the decision

23. In either case, the letter will be copied to the appropriate ORR “account holder” (inspector) and the relevant train operator (i.e. the most recent employer of the driver). We will update our register of train driving licences and mark it for any further action. For example, suspended licences will be withdrawn after 12 months if there is no further contact. Where a suspended licence is withdrawn after 12 months, a further letter will then be sent to the driver, copied to the ORR inspector and train operator.

What happens to the licences once a decision to suspend or withdraw has been reached?

24. The following shows what happens to a licence following suspension, withdrawal etc.:

Suspension: If suspended, the licence must be returned to ORR, and will be held for a maximum of 12 months before being destroyed. Should the driver be re-instated, the licence will be returned to the driver.

Withdrawal: If withdrawn, the licence must be returned to ORR. If there is no appeal, or the appeal is unsuccessful, the licence will be destroyed. If a driver who has had

their licence withdrawn wants to drive trains again they will have to apply for a new licence and satisfy all relevant requirements.

The register will be updated accordingly.

How can ORR's decisions to suspend or withdraw licences be appealed?

25. If ORR suspends or withdraws a licence, the driver or their representative can lodge an appeal with the Secretary of State.

26. Appeals should be addressed to:

Secretary of State for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

and should include all details regarding the case, including details of the incident(s) involved, copies of hearing or appeal minutes, copies of communications with ORR etc.

How does data protection legislation impact what information train operators can send to ORR?

27. ORR has in place a [Privacy Notice](#) that sets out how we collect and process personal data in relation to the TDLCR. This Privacy Notice also sets out how we handle the flow of information between ORR, train operators and other parties in connection with our obligations under TDLCR.

28. The General Data Protection Regulation (GDPR) provides that personal data can be collected, processed and disclosed if there is a lawful basis for doing so. Where ORR processes personal data in relation to the TDLCR it is doing so on the lawful basis that the processing is necessary for compliance with a legal obligation on it, namely compliance with the requirements of the TDLCR.

29. In particular, ORR is legally obliged to disclose personal data in relation to the suspension/withdrawal of licences:

- regulation 18 requires ORR to inform a train driver's employer of any decision to suspend or withdraw a licence;

- regulation 19 requires ORR, where the validity of an EU issued licence is called into question, to inform the relevant safety authority who issued the licence and the Intergovernmental Commission;
 - regulation 26 states that ORR must, upon request, supply information on the status of licences issued by it to an appropriate train operator or to the Department for Infrastructure, another safety authority, the Intergovernmental Commission or the European Union Agency for Railways.
30. There are also legal obligations on train operators to provide ORR with information in relation to the suspension/withdrawal of licences:
- regulation 17 requires train operators to supply ORR with any information that could call into question the validity of a licence and/or any period of work incapacity for a period of longer than 3 months. The regulation still applies in the event that any driver in question has subsequently left the train operator's employment for any reason.
 - regulation 27 where ORR has requested information from a train operator in relation to certificates they have issued or in relation to their functions under the TDLCR, train operators are legally obliged to provide ORR with such information.

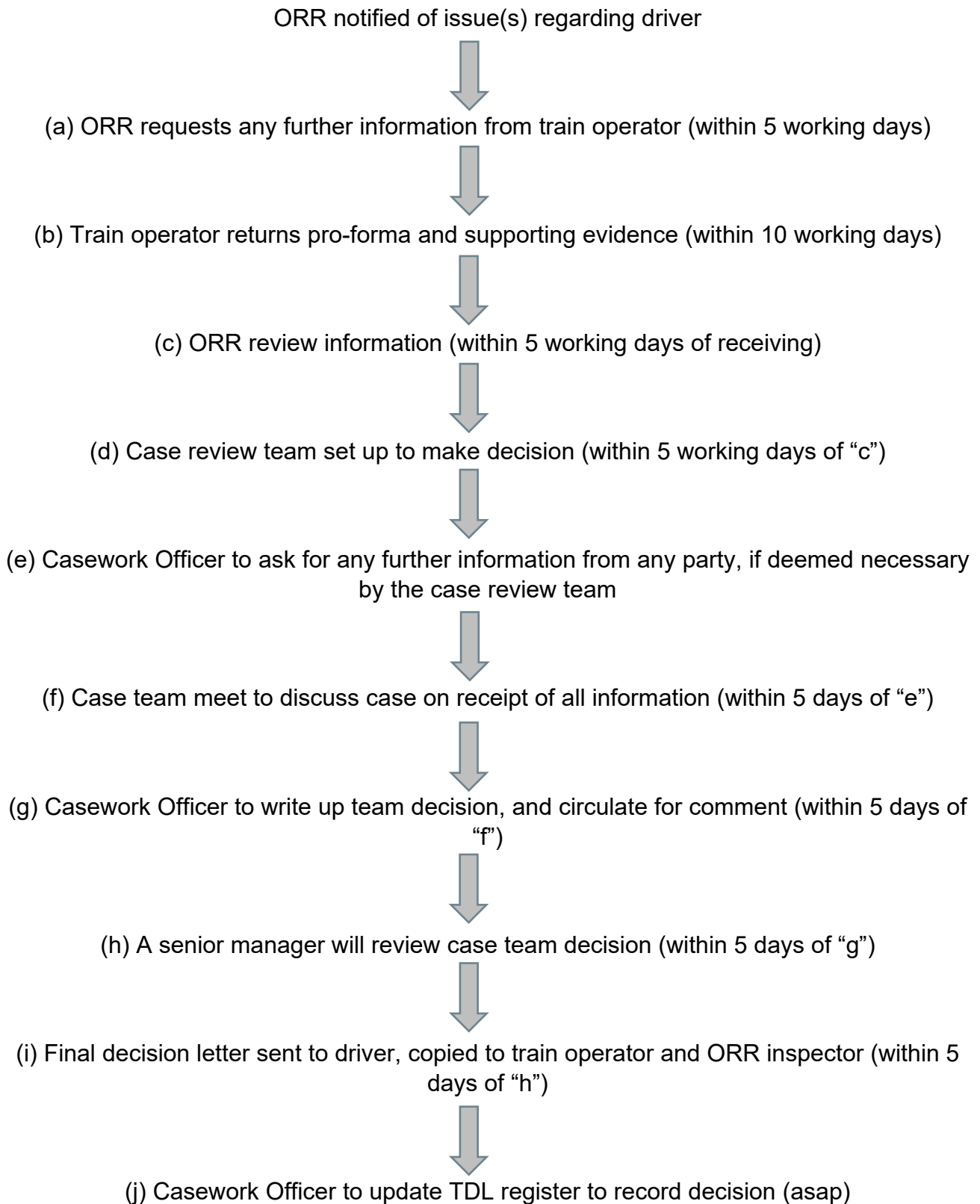
Information required to help ORR determine whether suspension or withdrawal may be appropriate - (Annex 01)

Method of leaving	Email (with details)	ORR pro-forma	New train operator (if known)	Effective date	Date last drove a train	Competence issues	Medical / Psychological issues	Work incapacity of more than 3 months
Retirement	✓			✓				
Resignation	✓		✓	✓	✓	✓*	✓*	✓*
Dismissal	✓**	✓		✓	✓	✓*	✓*	✓*
Death	✓							

* Where the train operator believes it to be relevant

** Followed up with a completed pro-forma

Train Driver Licence Suspension / Withdrawal Process - (Annex 02)





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