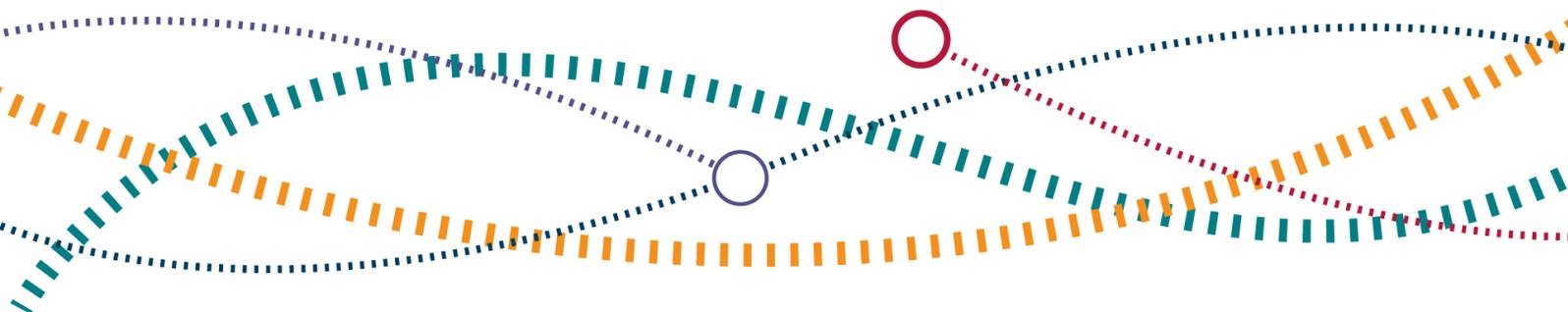




Train Driving Certificate Appeals

Making an appeal to ORR against a decision of a railway undertaking or infrastructure manager

15 March 2024



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Summary

- 1 This guidance sets out the process the Office of Rail and Road (ORR) will follow when considering train driving certificate appeals under Regulation 36 of The Train Driving Licences and Certificates Regulations 2010 (TDLCR).
- 2 ORR can only consider an appeal from an applicant or holder of a train driving certificate which is about the decision of a railway undertaking or infrastructure manager (referred to as 'employer' in this guide) to:
 - not grant an application for a train driving certificate;
 - not update or renew a train driving certificate; or
 - suspend or withdraw a train driving certificate.
- 3 Please note that a failure of an employer to make a decision on an application for a train driving certificate, or for its update or renewal, within one month of receiving all the necessary documents may be treated as a refusal of the application for the purpose of making an appeal.
- 4 This guide explains what information we require from appellants, the stages of the appeal process and how to contact ORR.
- 5 Decisions made by ORR on these appeals are legally binding on the parties.

Chapter 1: Conditions for an appeal

6 Train drivers have the right to appeal against certain decisions made by an employer in relation to their train driving certificate. These are decisions:

- not grant an application for a train driving certificate;
- not update or renew a train driving certificate; or
- to suspend or withdraw a train driving certificate.

Please note: a failure by an employer to make a decision on an application for a train driving certificate, or for its update or renewal, within one month of receiving all the necessary documents may be treated as a refusal of the application for the purpose of making an appeal.

7 ORR cannot consider an appeal until all relevant internal appeal procedures with an employer have been followed and concluded.

8 If a situation arises where a claim is being made to an Employment Tribunal, as well as a certificate appeal to ORR, we will consider the circumstances on a case-by-case basis and we may decide to hear the appeal after the outcome of the Employment Tribunal case is known.

Chapter 2: Appeal options

- 9 There are different options for how an appeal case can be considered and determined. Either an ORR appeal panel or a person appointed by ORR can consider and determine the case. A case can also be heard at an oral hearing or considered without a hearing using written evidence.
- 10 Regardless of how a case is considered, any determination will be reached following a full review of all the evidence submitted, any representations made (either orally or in writing) and all the relevant circumstances of the case.
- 11 Paragraphs 12-13 below summarise how appeals will be considered and determined by either by ORR or an appointed person. Further details are contained in the rest of this guidance.

Written or oral hearings by an appointed person

- 12 In cases where ORR considers it appropriate to do so, having regard to the nature of the questions which are likely to arise, a person may be appointed to determine the appeal on ORR's behalf. This could include determining the appeal on the written evidence or via an oral hearing. If a person is appointed, then the rules set out in the Tribunal and Inquiries Act 1992 will apply. If the appointed person decides to hold an oral hearing, then the Health and Safety Licensing Appeals (Hearing Procedure) Rules 1974 and the Health and Safety Licensing Appeals (Hearing Procedure) (Scotland) Rules 1974 will also apply as appropriate.

Written or oral hearings by ORR

- 13 If ORR decides to consider the appeal itself, an appeal panel will be established. We will also consider whether the appeal will be determined through written evidence or via an oral hearing. Where an oral hearing is decided upon the rules set out in the Health and Safety Licensing Appeals (Hearing Procedure) Rules 1974 and the Health and Safety Licensing Appeals (Hearing Procedure) (Scotland) Rules 1974 will also apply as appropriate.

Chapter 3: Appeal process

Stage 1: Starting an appeal

- 14 Firstly, anyone considering a certificate appeal should carefully read this guidance. If you require any further information or clarification, please refer to paragraphs 32-34 for details about how to get in touch with ORR.
- 15 To start the appeal process, we ask that the appeal form at Annex 1 is completed in full. This form should be addressed to ORR's Director of Railway Safety and preferably emailed to ORR at TDL.Applications@orr.gov.uk (a postal option is also available).
- 16 Once we receive the appeal form, the appellant will be sent an acknowledgement and confirmation that an ORR Case Officer has been appointed. The Case Officer will contact the appellant and their employer to gather any further information required by ORR and issue further communications as the appeal progresses.

Stage 2: Establishing an ORR appeal panel

- 17 An appeal panel will be created to oversee the appeal, as a minimum consisting of:
 - The ORR Director of Railway Safety (or their delegate) who will chair the panel;
 - A member of the ORR Legal team;
 - A member of the ORR Railway Safety Directorate;
 - The ORR Case Officer;
 - Any specialist advisors as may be necessary (e.g. ORR's human resources specialist or other members of staff).

Stage 3: Making a decision about whether the appeal can proceed

- 18 The first matter for the appeal panel will be to consider whether the appeal can be considered. ORR can only consider an appeal under TDLCR Regulation 36 if it is about a decision not to grant an application for a train driving certificate, its update or renewal or a decision to suspend or withdraw it.
- 19 We will aim to determine this within 10 working days of receiving a complete appeal form. If required, the Case Officer will write to the appellant to request any additional information necessary for the panel to reach a decision. The Case Officer may also request information from an employer at this stage. Therefore, meeting our 10-working day ambition may be dependent on the specific circumstances of the case.

20 Once in receipt of all the necessary information, the appeal panel may conclude that the appeal is outside the remit of an appeal under the regulations. In that instance, the Case Officer will write to the appellant and explain the reason(s) for the appeal panel's decision and that the appeal process will end.

Stage 4: Deciding whether an ORR appeal panel or an appointed person will consider and determine the appeal

21 If the appeal panel decides that the appeal can be considered, it will then decide whether or not a person should be appointed to consider and determine the appeal on its behalf.

22 Under Regulation 36 of TDLCR, in cases where ORR considers it appropriate to do so and having regard to the nature of the questions which are likely to arise, a person may be appointed to consider and determine the appeal on our behalf.

23 We will write to the appellant and their employer setting out the panel's decision and providing the details of the appointed person. Future arrangements for the appeal will be communicated to all parties by the appointed person. The appeal panel will offer support to the appointed person if required.

Stage 5: (for an ORR appeal panel hearing) Deciding between an oral hearing or considering the case by written evidence

24 If the ORR appeal panel is to consider and determine the case, we will decide whether it is appropriate to have an oral hearing. The Case Officer will contact both the appellant and their employer to explain the options and ask them to confirm (or re-confirm, if a preference was stated on the Appeal Form by the appellant) whether or not they wish to appear and be heard at the appeal.

25 If either party wishes to appear at an oral hearing, then ORR will afford them the opportunity to do so. But the appeal may be determined without an oral hearing if both parties do not wish to appear and be heard. If an appeal is to be determined without an oral hearing, then ORR will determine the appeal based upon all the written evidence submitted. The appellant and their employer's written evidence can contain all the same information that would have been given at an oral hearing.

26 Once confirmed, the Case Officer will write (separately) to both the appellant and the employer setting out:

- Confirmation that the appeal will be considered and determined by an ORR appeal panel;
- The type of appeal (i.e oral hearing or written submissions) and full details of the process and timescales which will be followed;

- Our understanding of whether or not the appellant or employer wishes to appear and be heard at the appeal;
 - The appeal hearing date(s);
 - A request for any further information we may require from the appellant or employer before we can consider the appeal, if necessary.
- 27 Further details about the arrangements for how ORR’s appeal panel will conduct an oral hearing or consider the appeal by written submissions are set out in Annex 2.
- 28 An appeal conducted by an appointed person may follow slightly different arrangements. Details about the rules to be followed will be communicated to the appellant and employer by the appointed person directly.

Step 6: Determination of the appeal

- 29 Without prejudice to the appellant’s right to make an application for a judicial review, a determination by ORR (or a person appointed to make a determination on the ORR’s behalf) is binding on all parties affected by that determination.
- 30 ORR (or a person so appointed) may give such directions as they consider appropriate to give effect to the determination.
- 31 It is the duty of any person to whom a direction is given to comply with and give effect to that direction.

Contacting ORR

- 32 At any point before submitting an Appeal Form, a person considering making an appeal can contact ORR for information or to seek clarification. Please e-mail TDL.Applications@orr.gov.uk clearly marking the e-mail subject as “Certificate Appeal Enquiry”.
- 33 Once an appeal case has started, correspondence between ORR, the appellant or an employer will be through the named ORR Case Officer.
- 34 However, if ORR’s appeal panel decides that an appointed person will consider and determine the case, the Case Officer will write to the appellant and the employer setting out those arrangements. Future correspondence will be directly with the appointed person unless otherwise advised.

Annex 1: Appeal Form

APPLICATION TO THE OFFICE OF RAIL AND ROAD UNDER REGULATION 36 OF THE TRAIN DRIVING LICENCES AND CERTIFICATES REGULATIONS 2010: TRAIN DRIVING CERTIFICATES

This form should be used to make an appeal to the Office of Rail and Road (ORR) against the decision of an employer relating to the granting, updating, renewal, suspension or withdrawal of a train driving certificate under Regulation 36 of the Train Driving Licences and Certificates Regulations 2010.

Before completing this form, please carefully read the ORR guidance document, “*Train Driving Certificate Appeals: Making an appeal against decisions of railway undertakings or infrastructure managers*”

Please complete all fields in this form as fully as possible.

Appellant Details	
1. First name(s):	
2. Surname	
3. Date of Birth (DD.MM.YY)	
4. Job title:	
5. Address:	
6. Telephone number:	
7. Email address:	
8. Please indicate whether these are home or work contact details	
9. Name and address of your employer	
Appellant train driving <u>licence</u> details. <i>If you have a train driving licence, please provide details</i>	
10. Do you currently have a train driving licence?	Yes <input type="checkbox"/> No <input type="checkbox"/> (please move to Q15)

11. GB Licence number	
12. Date of licence first issue	
13. Date of expiry	
14. Is the licence currently suspended or withdrawn?	Yes <input type="checkbox"/> (please complete Q15 and Q16) No <input type="checkbox"/>
15. If licence is suspended or withdrawn, please provide the date the licence was suspended or withdrawn	
16. If the licence was suspended or withdrawn, please give the reason(s):	
Appellant Train Driving Certificate details. <i>If you have a train driving <u>certificate</u>, please provide details of the certificate relevant to your appeal</i>	
17. Do you currently have a train driving certificate?	Yes <input type="checkbox"/> No <input type="checkbox"/> (please move to Q21)
18. Issuing body (full name and address of train operator or infrastructure manager)	
19. Issue date of certificate	
20. Expiry date of certificate	
21. Is the railway undertaking or infrastructure manager aware of your certificate appeal to ORR under TDLCR?	Yes <input type="checkbox"/> (please provide contact details below) No <input type="checkbox"/>

<p>22. Please select from the options below why you are making an appeal: <i>(you can select more than one if appropriate)</i></p>	<p><i>(intentionally blank)</i></p>
<p>Decision by an employer not to grant a train driving certificate?</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>
<p>Decision by an employer not to update or renew an existing train driving certificate?</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>
<p>Decision by an employer to suspend a train driving certificate?</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>
<p>Decision by an employer to withdraw a train driving certificate?</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>
<p>An employer has not made a decision about any of the above within one month of receiving all the information</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>
<p>Information about the appeal</p>	
<p>23. Please use the space below (the box will expand as necessary) to provide information you want ORR to know that is relevant to your appeal. This should include:</p> <ul style="list-style-type: none"> • a description of the reasons why you, as the appellant, are seeking a review of a decision made by a railway undertaking or infrastructure manager relating to the granting, updating, renewal, suspension or withdrawal of a train driving certificate; • a comprehensive timeline relevant to the appeal giving details of all key events; • details of all the internal appeal procedures undertaken to date with an employer about the matters relevant to this appeal, and what the outcome of this was for each. Additionally, please tell us whether or not there are any further internal appeals which have not yet concluded or if you are pursuing a claim against your employer through an employment tribunal. (please note: If the relevant internal appeal procedures are not completed, then ORR cannot not hear an appeal. We may not hear an appeal if you are pursuing an employment tribunal case until its outcome is known). 	

Determination of the appeal

Under TDLCR (Regulation 36), ORR must ask the appellant and the party against which the appeal is brought if they wish to appear and be heard on the appeal. Separately, we will contact the railway undertaking or infrastructure manager you told us about above who will be the other party in the appeal.

24. Do you wish to appear in person and be heard on the appeal?

Yes

No

Other Information

Please use this space below to add any further details relevant to the appeal which you have not already told us about. If you are attaching copies of documents, please list each of these below together with a brief explanation of their relevance to the appeal case. (please do not send any original documents, only copies). The box will expand as necessary.

Declaration

I declare that the information provided in this form is true and complete to the best of my knowledge

Signed

Date

Full Name (in capitals)

Sending this form to ORR

<p>By Email: please send a signed copy of this form together with any other attachments, supporting documents or information to ORR to</p> <p>TDL.Applications@ORR.gov.uk</p> <p>The subject line of the e-mail should be marked “Confidential Certificate Appeal Form FAO Director of Railway Safety: {your full name}”</p>	<p>Sending by e-mail? <input type="checkbox"/></p>
<p>By Post: Alternatively, you can supply hard copies of this signed application form and any other attachments, supporting documents or information. This should be marked confidential and sent to:</p> <p>The Director of Railway Safety Office of Rail and Road 25 Cabot Square E14 4QZ</p>	<p>Sending by post ? <input type="checkbox"/></p>

Annex 2: ORR appeal panel timescales and arrangements

The following provides a summary of the arrangements and timescales which an ORR appeal panel will follow for either an oral hearing or consideration by written evidence only. The specific details and timings will be confirmed in writing to both the appellant and an employer (see Stage 5 in Chapter 3).

An ORR appeal panel by oral hearing

- (1) Where an oral hearing is decided upon the rules set out in the Health and Safety Licensing Appeals (Hearing Procedure) Rules 1974 and the Health and Safety Licensing Appeals (Hearing Procedure) (Scotland) Rules 1974 will apply as appropriate.
- (2) A date, time, and place for the holding of the hearing will be fixed. Parties will be given no less than 42 days' notice of this date, unless both parties consent to a lesser period of notice.
- (3) No later than 28 days before the hearing (unless a shorter timescale is agreed upon) both parties will be required to serve a written statement of any submissions which they propose to put forward at the hearing, including a list of any documents they intend to refer to or put into evidence. Both parties should be given the opportunity to inspect and take any copies of the documents. However, for practical reasons, we would expect both parties to provide copies of any relevant documents which can then be provided to the other party.
- (4) At the hearing, both parties (i.e you and your employer) will be given the opportunity to make an opening statement (where each can explain the main points of their case), present evidence to support their arguments and cross-examine anyone who might be giving evidence. The appeal panel may ask you, or your employer, questions about your evidence, including the written evidence provided before the hearing. The appeal panel will consider all the evidence from the hearing (and previously supplied written evidence) before making its decisions.
- (5) Either party may appoint legal counsel to represent them at the hearing.
- (6) The determination will be made by the appeal panel and a written record will be signed off by the Director of Railway Safety or the appointed person.

- (7) Following the determination of the appeal, we will write to both parties setting out the reasons for reaching the determination, together with any directions appropriate to give effect to the determination (especially in relation to the certificate itself). We will aim to do this within 14 days of the hearing.

An ORR appeal panel using written evidence

- (1) If both parties do not express a wish to appear and be heard, then the Appeal Panel will proceed with gathering written information from both parties.
- (2) The Appeal Panel (via the Case Officer) may request further information from the appellant and the employer that it considers necessary to come to a decision on the appeal. This will depend on the complexity of the appeal and the thoroughness of the original representations submitted, such as the Appeal Form.
- (3) In addition, both parties will also be given 21 days in which to submit any further evidence or make any further written representations.
- (4) Once the 21-day period has expired, the Appeal Panel will review all the evidence provided and any representation made. It will aim to reach a determination within a further 10 working days. This determination will be made following a minuted meeting to discuss all of the evidence in the case and any representations received. The determination, minutes of the meetings and the reasons for reaching the determination, will be communicated in writing to both parties within 14 days.
- (5) The decision will be agreed upon by the panel and signed off by the Director of Railway safety or their appointed delegate.



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