
STATUTORY INSTRUMENTS

1991 No. 2239

ROAD TRAFFIC

The Goods Vehicles (Operators' Licences, Qualifications and Fees) (Amendment) (No. 2) Regulations 1991

<i>Made</i>	- - - -	<i>7th October 1991</i>
<i>Laid before Parliament</i>		<i>14th October 1991</i>
<i>Coming into force</i>	- -	<i>4th November 1991</i>

The Secretary of State for Transport—

- (a) in exercise of the powers conferred by sections 60(2), 69E(1), 69G(2) and (3), 85(1) and (2), 86, 89(1) and 91(1) and (5) of the Transport Act 1968(1), and now vested in him(2); and
- (b) being a Minister designated(3) for the purposes of section 2(2) of the European Communities Act 1972(4) in relation to the regulation and supervision of qualifications of the persons engaged in road transport, in exercise of the powers conferred by that section;

and in exercise of all other enabling powers and having consulted with representative organisations in accordance with section 91(8) of the Transport Act 1968 and the Council of Tribunals in accordance with the requirements of section 10 of the Tribunal and Inquiries Act 1971(5) hereby makes the following Regulations:—

Commencement and citation

1. These Regulations may be cited as the Goods Vehicles (Operators' Licences, Qualifications and Fees) (Amendment) (No. 2) Regulations 1991 and shall come into force on 4th November 1991.

(1) 1968 c. 73; sections 60(4) and 71(6) have been amended by the Road Traffic Acts 1960 and 1972, Road Traffic Regulation Act 1967 and Transport Act 1968 (Metrication) Regulations 1981 (S.I.1981/1373, as amended by S.I. 1984/177); sections 67(2) and 69(4) have been amended by Schedule 4 to the Road Traffic Act 1974 (c. 50); sections 69C(2), 69D(3), 69E(1), 69G(2) and (3) were added by Schedule 4 to the Transport Act 1982 (c. 49); sections 71(6), 85(1), 86, 89(1) and 91(1) and (2) have been amended by Part II of Schedule 9 to the Transport Act 1980 (c. 34). Section 86 has also been amended by the Insolvency Act 1985 (c. 65), Schedule 8, paragraph 16. "Prescribed" is defined in section 92(1).

(2) S.I. 1970/1681, 1979/571 and 1981/238.

(3) S.I. 1975/1707.

(4) 1972 c. 68.

(5) 1971 c. 62.

Preliminary

2. The Goods Vehicles (Operators' Licences, Qualifications and Fees) Regulations 1984(6) are hereby further amended in accordance with the following provisions of these Regulations.

Amendments to definitions

3.—(1) Regulation 3(2) shall be amended as follows.

(2) For the definition of “application” there shall be substituted the following definition—

““application for a licence” means an application for an operator’s licence for which publication is required by section 63(1)(7); “application for the variation of a licence” means an application for the variation of an operator’s licence for which publication is required by section 68(4) or 69D(3); and, “application” when used otherwise than as part of those expressions means—

- (a) an application for a licence, or
- (b) an application for the variation of a licence;”.

(3) In the definition of “transport manager” the words “full time” shall be omitted.

(4) The following definitions shall be inserted in the appropriate places in alphabetic order—

““farm” includes a market garden”; and

““keeper”, in relation to a vehicle, is the person in whose name the vehicle is registered under the Vehicles (Excise) Act 1971(8)

Amendments to provisions concerning certificates of qualification

4.—(1) Regulation 6 shall be amended as follows.

(2) In paragraph (1)—

- (a) the words “Northern Ireland or” shall be omitted,
- (b) after the words “the licensing authority” there shall be inserted the words “or the Secretary of State”, and
- (c) in sub-paragraph (b) the words “or of Northern Ireland” shall be omitted.

(3) After paragraph (1) there shall be inserted the following paragraph—

“(1A) The application shall be made—

- (a) in the case of a person who holds one licence, to the licensing authority which granted the licence,
- (b) in the case of a person who holds more than one licence, to a licensing authority which granted any of the licences, or
- (c) in any other case, to the Secretary of State.”

(4) In paragraph (4), after the words “licensing authority” there shall be inserted the words “or, as the case may be, the Secretary of State”.

Death, bankruptcy etc of licence holder or applicant

5.—(1) Regulation 10 shall be omitted.

(6) S.I. 1984/176, as amended by S.I. 1986/666, 1391, 1987/841, 2170 and 1988/2128, 1990/1849 and 2640, 1991/1969.

(7) References to a numbered section have the meaning given in regulation 3(1)(a) of the Goods Vehicles (Operators' Licences, Qualifications and Fees) Regulations 1984.

(8) 1971 c. 10; paragraph (2) of Part I of Schedule 3 was substituted by paragraph 2(6) of Schedule 2 to the Finance Act 1989 (c. 26).

(2) After regulation 32 there shall be inserted the following regulation—

“**32A.**—(1) In this regulation, “actual holder” in relation to licence, means the person to whom the licence was issued.

(2) This Regulation applies in the event—

- (a) of the death or bankruptcy of the actual holder of a licence,
- (b) in the case of a company, of the actual holder of a licence going into liquidation or an administration order being made in relation to the actual holder, or
- (c) of the appointment of a receiver or manager of the trade or business of the actual holder of a licence.

(3) This regulation also applies in the event of the actual holder of a licence becoming a patient within the meaning of Part VII of the Mental Health Act 1983⁽⁹⁾ or, in Scotland becoming incapable of managing his own affairs.

(4) After the happening of any of the events mentioned in paragraphs (2) and (3) the licensing authority may direct that a person carrying on the trade or business of the actual holder of the licence is to be treated for the purposes of Part V as if he were the holder thereof for such purpose and to such extent as is specified in the direction for a period not exceeding—

- (a) if it appears to the licensing authority that there are special circumstances, 18 months;
- (b) in any other case, 12 months;

from the date of the happening of the event.

(5) The powers under paragraph (4) shall be exercisable in relation to a standard licence whether or not the person carrying on the trade or business of the actual holder of the licence satisfies the requirement of professional competence.

(6) Where a person is treated as if he were the holder of the licence by virtue of a direction under this regulation—

- (a) any vehicle belonging to the actual holder of the licence or in his possession under an agreement for hire purchase, hire or loan shall for the purposes of Part V be treated as if it belonged to that person, or was in the possession of that person under an agreement for hire purchase, hire or loan as the case may be; and
- (b) if the licence is a standard licence, nothing in regulation 9 shall oblige the licensing authority to revoke the licence by reason only of that person not satisfying the requirement of professional competence.

(7) A licence shall not by virtue of this regulation continue to have effect after it would otherwise have expired by effluxion of time or ceased to continue in force by virtue of section 67(4) (whichever is the later).

(8) Where the actual holder of a licence (“the old licence”) makes an application for a new licence, nothing in this regulation shall prevent the application being treated for the purposes of section 67(4) as an application for a new licence in substitution for the old licence.

(9) Where a person who, by virtue of a direction given under this regulation is treated as being the holder of a licence (“the old licence”), makes an application in his own name for a new licence in substitution for the old licence the application shall, unless the contrary intention appears from the direction, be treated for the purposes of section 67(4) as an application by the actual holder of the old licence.”

(9) 1983 c. 20. Protection of transport manager’s interests 7.

Notification of decisions

6. At the end of regulation 23 there shall be added the following paragraph—

“(5) Where—

- (a) a licensing authority grants an application for, or the variation of, a licence, in either case in the terms applied for, and
- (b) an objection or representation has been made as specified in Regulations 18 and 19,

it shall be his duty to furnish to the applicant and any objector a statement, either written or oral, of the reasons for his decision, and to furnish such a statement to any person who has made representations in accordance with Regulations 18 and 19 and who asks the licensing authority for such a statement.”

Protection of transport manager’s interests

7. After regulation 23 there shall be inserted—

“PART VIA

PROTECTION OF TRANSPORT MANAGER'S INTERESTS

Requirement for transport manager to be notified

23A.—(1) A licensing authority shall not in any proceedings under Part V make a finding that a transport manager is not of good repute or is not professionally competent unless the licensing authority is satisfied that the transport manager has been served with a notice—

- (a) stating that an issue in the proceedings is whether he is of good repute or is professionally competent (as the case may be);
- (b) stating that he is entitled to make representations under this regulation, within 28 days beginning with the date that the notice is served on him; and
- (c) setting out the nature of the allegations against him.

(2) Where a transport manager makes representations under this regulation, the licensing authority shall consider the representations—

- (a) in considering whether or not to hold an inquiry as provided in section 87, and
- (b) in determining whether the transport manager is of good repute and is professionally competent.

(3) A transport manager who has made representations under this regulation shall be entitled to appear at any inquiry held under section 87 and either be heard in person or represented by counsel, a solicitor or, at the discretion of the licensing authority, by any other representative.

(4) A notice shall be deemed for the purposes of paragraph (2) to have been served on a transport manager on the date that it would have been delivered in the ordinary course of post if it was sent by post addressed to him at his last known address, notwithstanding that the notice was returned as undelivered or was for any other reason not received by him.

(5) The reference in this regulation to a person being of good repute or professionally competent shall be construed in accordance with Schedule 6.”

Fees

8. In regulation 35—

- (a) in paragraphs (1D), for the words “before the grant, or variation, of the licence occurs” there shall be substituted the words “within a period of 7 days beginning with the date on which the grant or variation of the licence occurs;”
- (b) in paragraph (1E), for the words “before the licence is granted” there shall be substituted the words “within the period of 7 days beginning with the date on which the licence is granted”; and
- (c) in paragraph (1F), for the words “before the direction is given” there shall be substituted the words “within the period of 7 days beginning with the date on which the direction is given”.

Holding companies and subsidiaries

9. In paragraph 2 of Schedule 4, for sub-paragraph (j) there shall be substituted—

“(j) in section 67 after sub-section (4) there were added the following sub-sections—

“(4A) If—

- (a) a company or other body corporate has a subsidiary which holds an operator’s licence, and
- (b) at the date on which the operator’s licence is due to expire proceedings are pending before the licensing authority on an application by the company or other body corporate in respect of that subsidiary in pursuance of regulations made under section 85 of this Act, for the grant of a licence to come into force when the licence held by the subsidiary ceases to be in force,

the existing licence held by the subsidiary shall continue in force until the date specified in subsection (4B).

(4B) The date referred to in sub-sections (4A) is the date on which—

- (a) the application; and
- (b) any appeal under section 70 of this Act arising after the application, is disposed of.

(4C) Sub-section (4A) is without prejudice to the exercise in the meantime of the powers conferred by section 69 of this Act.””

Exemptions

10. In regulation 34, after the words “the classes mentioned in” there shall be inserted the words “Part I of”.

11.—(1) Schedule 5 shall be amended as follows.

(2) For the heading there shall be substituted—

“CLASSES OF VEHICLES FOR WHICH A LICENCE IS NOT REQUIRED

PART I”.

(3) For paragraph 1, there shall be substituted the following paragraph—

“1. Any tractor as defined in paragraph 2 of Part I of Schedule 3 to the Vehicles (Excise) Act 1971 while being used for one or more of the purposes specified in Part II of this Schedule.”

(4) For sub-paragraphs (a) and (b) of paragraph 18 there shall be substituted the following sub-paragraphs—

- “(a) for the purposes of the enactments relating to weights and measures or the sale of food and drugs; or
- (b) before the 1st of April 1992 for:
 - (i) road cleansing or road watering; or
 - (ii) the collection or disposal of refuse, night soil or the contents of cess-pools or septic tanks.”

(5) At the end there shall be added—

“**29.** A vehicle which is being used for snow clearing, or for the distribution of grit, salt or other materials on frosted, icebound or snow-covered roads or for going to or from the place where it is to be used for the said purposes or for any other purpose directly connected with those purposes.

30. A vehicle proceeding to or from a station provided by the Secretary of State under section 45 of the Road Traffic Act 1988⁽¹⁰⁾ for the purposes of an examination of that vehicle under that section provided that—

- (a) the only load being carried is a load required for the purposes of the examination, and
- (b) it is being carried at the request of the Secretary of State.

PART II

PURPOSES REFERRED TO IN PARAGRAPH 1 OF PART I OF THIS SCHEDULE

1. Hauling—

- (a) threshing appliances;
- (b) farming implements;
- (c) a living van for the accommodation of persons employed to drive the tractor; or
- (d) supplies of water or fuel required for the tractor.

2. Hauling articles for a farm required by the keeper, being either the occupier of the farm or a contractor employed to do agricultural work on the farm by the occupier of the farm.

3. Hauling articles for a forestry estate required by the keeper where the keeper is the occupier of that estate or employed to do forestry work on the estate by the occupier or a contractor employed to do forestry work on the estate by the occupier.

4. Hauling within 15 miles of a farm or a forestry estate occupied by the keeper, agricultural or woodland produce of that farm or estate.

5. Hauling within 15 miles of a farm or a forestry estate occupied by the keeper, material to be spread on roads to deal with frost, ice or snow.

6. Hauling a snow plough or a similar contrivance for the purpose of clearing snow; and

7. Hauling—

- (a) soil for landscaping or similar works, or
- (b) a mowing machine,

(10) 1988 c. 52.

where the keeper is a local authority.”

Signed by authority of the Secretary of State for Transport

7th October 1991

Christopher Chope
Parliamentary Under Secretary of State,
Department of Transport

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note does not form part of the Regulations)

1. These regulations further amend the Goods Vehicles (Operators' Licences, Qualifications and Fees) Regulations 1984. In addition to minor and drafting amendments, there are the following changes of substance.

2. Regulation 3 amends the definition of “transport manager” so that a person no longer has to be in the full time employment of a licence holder in order to be regarded as his transport manager.

3. Regulation 4 amends regulation 6 of the 1984 Regulations. Regulation 6 of the 1984 Regulations enables a person to obtain a certificate of qualification. Previously such a certificate could be issued only by a licensing authority. The regulation is amended so that where a person is not the holder of a licence he can obtain a certificate from the Secretary of State and in such a case a certificate cannot be issued by a licensing authority.

4. Regulation 5 revokes regulation 10 of the 1984 Regulations and inserts a new regulation 32A. Regulation 10 of the 1984 Regulations required an application for a licence to be refused if certain events had happened in relation to the applicant and for a licence to be automatically revoked if those events happened in relation to a holder. These events included death, bankruptcy, incapacity, liquidation, appointment of a receiver and dissolution of a partnership. The regulation, however, enabled the licensing authority to defer the revocation or refusal where the business was carried on by another person, in which case a licence could continue in force for the benefit of that person. The other person, however, had to apply for a licence in his own name within specified time limits. Regulation 32, which is made under section 86 of the Transport Act 1968, enables a licensing authority to direct that on the happening of certain events, a person carrying on a trade or business of a licence holder is to be treated as if he were the holder. The events are death, bankruptcy or incapacity (in the case of an individual), liquidation or an administration order (in the case of a company), and the appointment of a receiver or manager of the trade or business (in any case). The person does not have to apply for a licence in his own name.

5. Regulation 6 amends regulation 23 of the 1984 Regulations so as to require a licensing authority who has granted an application in the terms applied for to furnish to the applicant and any person who has duly made an objection a statement of the reasons for his decision. It also requires him to furnish such a statement to any person who has duly made representations and asked for such a statement.

6. Regulation 7 makes provision for the protection of transport managers' interests. It requires a transport manager to be given notice where it is alleged in the course of proceedings that he is not of good repute or professionally competent. In such a case the transport manager is given a right to make representations and to appear at any public inquiry.

7. Regulation 8 amends regulation 35 of the 1984 Regulations which make provision for the payment of fees. Previously, fees had to be paid before a licence was granted, a variation occurred or a direction was given. Fees will now have to be paid within 7 days after such dates.

8. Regulation 9 amends Schedule 4 to the 1984 Regulations. Schedule 4 modifies the 1968 Act in relation to holding companies and subsidiaries pursuant to section 85.

9. Regulations 10 and 11 amend Schedule 5 to the 1984 Regulations which sets out the classes of vehicles which are exempt from licence requirements. Paragraph 1 is amended as a consequence of the amendments made to the Vehicles (Excise) Act 1971 by Schedule 2 to the Finance Act 1989.

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To the classes of exempt vehicles there are added vehicles proceeding to or from a Goods Vehicle Testing Station and carrying a load for the purposes of the examination at the request of the Secretary of State. The former exemption for local authority vehicles involved with salting, gritting and snow clearing is extended to all vehicles. The exemption for local authority vehicles involved in road cleansing, collection or disposal of refuse, night soil or the contents of cess-pools or septic tanks is to be removed on 1st April 1992.