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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations give effect in Great Britain to Regulation (EC) No. 1071/2009 of 21 October 2009 (“Regulation 1071/2009”) which establishes common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repeals Council Directive 96/26/EC. The Regulation comes into force with direct effect on 4th December 2011.

Regulation 1071/2009 governs admission to, and pursuit of, the occupation of road transport operator. It requires road transport undertakings to have an effective and stable establishment in member states, be of good repute and have appropriate financial standing and the requisite professional competence; and it specifies conditions to be met to satisfy these requirements.

The Regulation provides for the enforcement of its provisions by requiring member states to designate one or more competent authorities to ensure its correct application, requiring undertakings to hold authorisations to engage in the occupation of road transport operator, and establishing the procedure for withdrawing authorisations and declaring transport managers unfit to manage transport activities. It also provides for appeals against adverse decisions, the establishment of national electronic registers of authorised undertakings, the protection of personal data, administrative cooperation between member states, the mutual recognition of certificates and member states to establish penalties for infringements.

Regulation 1071/2009 repeals Council Directive 96/26/EC which previously regulated this area and was implemented in Great Britain by the Public Passenger Vehicles Act 1981 (“the 1981 Act”) and the Goods Vehicles (Licensing of Operators) Act 1995 (“the 1995 Act”). These Regulations make amendments to those Acts (which regulate a wider range of operations than the Regulation) to accommodate the coming into force of Regulation 1071/2009 with direct effect, including making provision in exercise of discretionary powers conferred by the Regulation.

Part 1 of these Regulations contains general provisions. *Regulation 1(2)* provides for the Regulations not to apply to Northern Ireland except for regulation 4(2) which concerns the national electronic register. *Regulation 3* revokes three sets of Regulations which amended relevant parts of the 1981 and 1995 Acts but are now spent. Under *regulation 4* traffic commissioners are designated as the Competent Authority for the purposes of Regulation 1071/2009 and the Secretary of State is designated as the authority responsible for the national electronic register. *Regulation 5* provides that standard operator licences issued under the 1981 and 1995 Acts constitute authorisations for the purposes of Regulation 1071/2009. *Regulation 6* specifies a period of up to 28 days within which licensees are to notify changes in data for the purposes of article 11.5 of Regulation 1071/2009 and provides for the article to be enforced as if it was a licence condition.

Part 2 of the Regulations provides for amendments to primary legislation and for related transitional provisions. *Regulation 7* and *Schedules 1 and 3 (Part 1)* relate to the 1981 Act and the Transport Act 1985 and *regulation 8* and *Schedules 2 and 3 (Part 2)* relate to the 1995 Act.

The principal amendments made to the 1981 Act by *Schedule 1* include:

- (a) in *paragraph 2*, the introduction of a new section 12(1A) to make clear that the power to disapply the derogation in article 1.4(b) and (c) of Regulation 1071/2009 (for certain road passenger undertakings and for slow vehicles) is being exercised;
- (b) in *paragraph 3*, the replacement of section 14 (grant of licences) with new sections 14 to 14ZC to reflect the new conditions to apply to standard licence holders by virtue of the Regulation;

**Changes to legislation:** There are currently no known outstanding effects for the *The Road Transport Operator Regulations 2011*. (See end of Document for details)

- (c) in *paragraph 6*, the amendment of section 17 (revocation, suspension etc. of licences) to incorporate the time limits allowed for rectification by article 13 of the Regulation;
- (d) in *paragraph 11*, amendments to Schedule 3 (supplementary provisions as to qualifications for PSV operators licences) which:
  - (i) implement article 8.7 by empowering the approved body to grant exemptions from parts of the examination required by article 8.1 for holders of existing qualifications (sub-paragraph (4)(b));
  - (ii) introduce in new paragraphs 7A to 7C provisions which, respectively, permit transport managers to make representations in proceedings which could result in the finding that they are not of good repute or professionally competent and regulate the disqualification and re-instatement of transport managers (sub-paragraph (6)); and
  - (iii) revoke transitional provisions related to the implementation of Directive 96/26/EC which is revoked by Regulation 1071/2009 (sub-paragraph (7)).

*Paragraph 12* of Schedule 1 makes a minor consequential amendment to section 28 of the Transport Act 1985 (power to disqualify PSV operators).

The principal amendments made to the 1995 Act by *Schedule 2* include:

- (a) in *paragraph 2*, the introduction of a new section 2(1A) to make clear the power to disapply the derogation in article 1.4(c) of Regulation 1071/2009 (for slow vehicles) is being exercised and (read with *paragraph 19(3)* of the Schedule) the replacement in respect of carriage for hire or reward operations of the small vehicles exemptions in Schedule 1 with an exemption based on article 1.4(a) of the Regulation;
- (b) in *paragraph 5*, the replacement of section 13 (determination of applications for operators' licences) with new sections 13 to 13D to reflect the new conditions to apply to standard licence holders by virtue of the Regulation;
- (c) in *paragraph 8(2)(d)*, the increase of the penalty in section 22(6) for contravening a condition attached to a licence under that section from level 4 on the standard scale to level 5;
- (d) in *paragraph 9*, the amendment of section 24 (interim licences) to allow a request for an interim standard licence to be treated as an application for an operator's licence for the purposes of section 13 of the Act;
- (e) in *paragraph 10*, the amendment of section 27 (revocation of standard licences) to incorporate the time limits allowed for rectification by article 13 of the Regulation;
- (f) in *paragraph 20*, amendments to Schedule 3 (qualifications for standard licence) which:
  - (i) implement article 8.7 of Regulation 1071/2009 by empowering the approved body to grant exemptions from parts of the examination required by article 8.1 for holders of existing qualifications (sub-paragraph (5)(a));
  - (ii) amend paragraph 15 (notification of transport manager of proceedings) to permit a transport manager to request an inquiry under section 35 of the Act (sub-paragraph 6(b)); and
  - (iii) introduce new paragraphs 16 and 17 which regulate the disqualification and re-instatement of transport managers (sub-paragraph (7)).

*Schedule 3* makes transitional provisions in respect of the amendments made to the 1981 Act (*Part 1*) and the 1995 Act (*Part 2*). These include provision for:

- (a) the application of the new provisions to existing standard licences and the continued application of certificates of professional competence (*paragraphs 2 and 9*);
- (b) the amendment of references to licence conditions in standard licences (*paragraphs 3 and 10*);

- (c) the application of the revised penalty for offences under section 22(6) of the 1995 Act (breaches of certain licence conditions) to apply to offences committed partly before and partly after the 4th December 2011 (*paragraph 11*);
- (d) objections already made to pending licence applications to continue to have effect (*paragraphs 4 and 12*);
- (e) the application of paragraphs 5(1) and 5(2) of Schedule 3 to the 1981 Act and paragraphs 10 and 11 of Schedule 3 to the 1995 Act (opinions given by a traffic commissioner as to the period required for the appointment of a new transport manager) during the commencement period (*paragraphs 5 and 13*);
- (f) in exercise of the discretion conferred by article 9 of Regulation 1071/2009, the power for the Secretary of State to grant transport managers who have continuously managed a road haulage or road passenger transport undertaking for a period of ten years ending on 4th December 2009 an exemption from the examination requirements of paragraph 6(1) of Schedule 3 to the 1981 Act and paragraph 13(1) of Schedule 3 to the 1995 Act (*paragraphs 6 and 14*); and
- (g) new paragraphs 7A to 7C of Schedule 3 to the 1981 Act and new paragraphs 16 and 17 of Schedule 3 to the 1995 Act to apply to proceedings in progress on the commencement date (*paragraphs 7 and 15*).

In Part 3 of these Regulations, *regulation 9* requires the Secretary of State to review their operation and effect, and to publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether these Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke or to amend them.

A full impact assessment of the effect that Regulation 1071/2009 (along with two related EC Road Transport Regulations) will have on the costs of business and the voluntary sector is available from the Operator Licensing and Roadworthiness Division at the Department for Transport, Great Minister House, 33 Horseferry Road, London SW1P 4DR and from the Department's website at <http://www.dft.gov.uk/consultations/dft-2011-11>. It is also published with the Explanatory Memorandum alongside this instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

**Changes to legislation:**

There are currently no known outstanding effects for the The Road Transport Operator Regulations 2011.