

EXPLANATORY MEMORANDUM TO
THE GOODS VEHICLES (LICENSING OF OPERATORS) (AMENDMENT)
REGULATIONS 2017

2017 No. 874

AND

THE OPERATION OF PUBLIC SERVICE VEHICLES (PARTNERSHIP)
(AMENDMENT) REGULATIONS 2017

2017 No. 873

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instruments

- 2.1 Regulation (EC) 1071/2009 of 21st October 2009 (“Regulation 1071/2009”) establishes common rules concerning the conditions to be complied with to pursue the occupation of road transport operator. Amendments to the principal domestic primary legislation applying to Great Britain have already been made by the Road Transport Operator Regulations 2011 (S.I. 2011/2632) which also exercise certain discretions conferred by the Regulation on Member States. The Explanatory Memorandum to the Regulations contains a transposition note.
- 2.2 The purpose of both the Goods Vehicles (Licensing of Operators) (Amendment) Regulations 2017 and the Operation of Public Service Vehicles (Partnership) (Amendment) Regulations 2017 is to make a number of consequential amendments to domestic secondary legislation.
- 2.3 A transposition note has not been prepared as the two Amending Regulations do not directly transpose Regulation 1071/2009 but rather make amendments to domestic secondary legislation in consequence of the coming into force of that Regulation and the Road Transport Operator Regulations 2011. A transposition note for the 2011 Regulations is available with them on *www.legislation.gov.uk*.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As the instruments are subject to the negative procedure and have not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Public Passenger Vehicles Act 1981 (c.14) (“the 1981 Act”) and the Goods Vehicles (Licensing of Operators) Act 1995 (c.23) (“the 1995 Act”), together with the regulations made under them, regulate the licensing of passenger and goods vehicle operators in Great Britain. They establish a dual system of licensing:
- (a) “standard licences” are needed when vehicles are used for hire or reward (i.e. carrying paying passengers or using a lorry (over 3.5 tonnes) for haulage of other people’s goods – for example, by a removals firm);
 - (b) “restricted licences” are needed when a vehicle (over 3.5 tonnes) is used only in conjunction with any trade or business carried on by the licensee (i.e. the vehicle carries the operator’s own goods – for example, a scaffolding lorry that transports scaffolding belonging to the scaffolding company between sites). This licensing system does not fall within scope of Regulation 1071/2009.
- 4.2 Regulation 1071/2009 requires each Member State to maintain a system under which relevant road transport operators established in their territories must be licensed to operate and it lays down requirements for the granting and continuance of those licences (or ‘authorisations’ as they are called in the Regulation). Its core requirements – to have an effective and stable establishment in the Member State and to be of good repute, professionally competent and financially viable - must be complied with both to obtain and retain a licence. To secure this, the Regulation requires Member States to designate a ‘competent authority’. In Great Britain, this is the Traffic Commissioners, who issue licences and carry out enforcement action against the non-compliant (including, ultimately, the withdrawal of the licence).
- 4.3 Being an EU Regulation, 1071/2009 has direct effect in the domestic law of member states. As the previous EU rules it replaces were set out in a Directive, there is a substantial overlap between the two domestic Acts and Regulation 1071/2009. In consequence, the Road Transport Operator Regulations 2011 (S.I. 2011/2632) amended the Acts to reflect the provisions of the Regulation. However, those Regulations did not amend domestic secondary regulations made under the two Acts, two of which also require amendment. The two Regulations the subject of this Memorandum provide for these additional consequential amendments.
- 4.4 The Select Committee on the European Union and the European Scrutiny Committee considered the draft of Regulation 1071/2009 in July 2007 and the Regulation was cleared from scrutiny by the Select Committee on the European Union on 2nd June 2008 and by the European Scrutiny Committee on 4th June 2008. A further letter and report on the negotiations were sent to the Committees on 26th June 2009 to inform them of the final outcome of negotiations.
- 4.5 The Regulations amended by the present Regulations are –
- a) the Goods Vehicles (Licensing of Operators) Regulations 1995 (S.I. 1995/2869) (“the 1995 Regulations”) which make supplementary provisions concerning the operator licensing regime and other matters; and
 - b) the Operation of Public Service Vehicles (Partnership) Regulations 1986 (S.I. 1986/1628) (“the 1986 Regulations”) which modify the provisions of the 1981 Act in its application to the provision of public service vehicles by persons in partnership.

5. Extent and Territorial Application

- 5.1 The extent of these instruments is Great Britain.
- 5.2 The territorial application of these instruments is Great Britain.
- 5.3 Northern Ireland is responsible for modifying its legislation to reflect the provisions of Regulation 1071/2009.

6. European Convention on Human Rights

- 6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The purpose of both the present Regulations is to make consequential amendments in consequence of the coming into force of both Regulation 1071/2009 (with direct effect) and changes to domestic legislation. In particular:

a) as to the Goods Vehicles (Licensing of Operators) (Amendment) Regulations 2017–

- regulation 3 inserts and modifies definitions;
- regulation 4 substitutes the new name of the former General and Municipal Workers' Union in regulation 10 of the 1995 Regulations;
- regulation 5 amends regulation 22 of the 1995 Regulations (notification of decisions) to give supremacy to the provisions on the same subject in Regulation 1071/2009;
- regulation 6 modifies regulation 29 of the 1995 Regulations (partnerships) to take account of the provisions of Regulation 1071/2009; and
- regulations 7 and 9 amend respectively regulation 30 and Schedule 2 of the 1995 Regulations (holding companies and subsidiaries) to reflect the requirement of Regulation 1071/2009 for undertakings to have an effective and stable establishment in a member state; and
- regulation 8 makes clear that the provisions of regulation 31(4) (powers to issue directions in the event of death, bankruptcy etc.) of the 1995 Regulations are subordinate to the time limits specified in article 13.1 of Regulation 1071/2009 for rectifying non-compliance with article 3 of the Regulation.

b) as to the Operation of Public Service Vehicles (Partnership) (Amendment) Regulations 2017 –

- regulation 3 introduces new definitions;
- regulation 4 substitutes an updated regulation 4 into the 1986 Regulations (cases where a public service vehicle operator's licence or a London service permit may be granted to unincorporated bodies) to refer to standard PSV operator's licences granted to undertakings for the purposes of Regulation 1071/2009;
- regulation 5 amends regulation 5 of the 1986 Regulations to reflect the provisions of the Greater London Authority Act 1999 (c.29);

- regulation 6 amends Part I of the Schedule to the 1986 Regulations (which specifies modifications to provisions of the Public Service Vehicles Act 1991) to apply to new provisions of that Act introduced by the Road Transport Regulations 2011 and to reflect other amendments made to the 1981 Act.

Both sets of Regulations contain the usual provisions requiring the periodic publication of a review of the Regulations.

Consolidation

7.2 There is currently no intention to consolidate the Regulations in question.

8. Consultation outcome

8.1 As the scope of the proposals was limited to existing operators a six week consultation was held. The formal consultation took place between 4th April 2011 and 20th May 2011. The consultation focused on the implementation of Regulation 1071/2009 and the content of the impact assessment. The results can be found at:

<https://www.gov.uk/government/consultations/public-consultation-on-implementing-ec-regulation-1071-2009-rules-concerning-the-occupation-of-road-transport-operator>.

8.2 A total of 21 responses were received. Respondees included trade associations, training groups, public sector organisations and private transport companies. Generally, responses indicated that the measures proposed were understood and accepted.

8.3 A further informal consultation has been carried out with the Freight Transport Association, the Road Haulage Association, the Confederation of Passenger Transport and the Senior Traffic Commissioner on the two Amending Regulations the subject of this Memorandum. This did not raise any substantive issues.

9. Guidance

9.1 As these instruments make only consequential amendments, no specific guidance is required. However, the implementation of Regulation 1071/2009 has already been subject to detailed industry guidance. The current guidance for goods vehicles can be accessed at, for goods vehicles:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/369009/gv79g-guidance-on-applying-for-a-goods-vehicle-operators-licence.pdf

and for passenger carrying vehicles:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/194259/PSV_Operator_Licensing_Guide.pdf

10. Impact

10.1 The impact on business, charities or voluntary bodies is not significant.

10.2 The impact on the public sector is not significant.

10.3 An Impact Assessment has not been prepared for these instruments because the consequential amendments they make do not impose any additional burdens or relieve existing ones. The full impact assessment for Regulation 1071/2009 can be found at;

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/2450/impactassessment.pdf.

It explains that the EU Regulation would affect 38,397 national licence holders (who can only operate in the UK) and 12,697 international licence holders. The Impact Assessment also calculates that the new EU rules have a relatively minor impact and impose costs of £3.6m whilst accruing additional benefits of £61m (largely in terms of improving the safety of foreign goods vehicles on UK roads).

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is that a small firms impact test was undertaken as part of the original Impact Assessment. This involved a telephone consultation with a sample of road haulage businesses. The findings showed that the majority of changes required by EU Regulation 1071/2009 would not cause those operators undue difficulty and that the concerns expressed could be dealt with by adopting available derogations in the Regulation.
- 11.3 The basis for the final decision on what action to take to assist small business is that, in response to the consultation exercise, available derogations were adopted that would minimise costs and additional burdens.

12. Monitoring & review

- 12.1 Both Amending Regulations contain a requirement for Ministerial review every five years.

13. Contact

- 13.1 Duncan Price, Freight, Operator Licence and Roadworthiness Division, Department for Transport, Great Minister House, 33 Horseferry Road, London SW1P 4DR (telephone: 020 7944 2241 or email: duncan.price@dft.gsi.gov.uk) can answer any queries regarding the instruments.