

**EXPLANATORY MEMORANDUM TO**  
**THE VEHICLE DRIVERS (CERTIFICATES OF PROFESSIONAL COMPETENCE)**  
**(AMENDMENT) (EU EXIT) REGULATIONS 2018**

**2018 No. 1004**

**1. Introduction**

- 1.1 This Explanatory Memorandum has been prepared by the Department for Transport and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 This instrument amends the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007 (the “DCPC Regulations”) to deal with deficiencies which would otherwise exist once the UK leaves the EU, and so provide for the existing legal regime for requiring professional drivers to hold a DCPC qualification to continue to operate domestically.

*Explanations*

What did any relevant EU law do before exit day?

- 2.2 The DCPC Regulations transposed EU Directive 2003/59/EC which required professional drivers of large goods and passenger carrying vehicles (lorries, buses, coaches and minibuses) to obtain an EU “Driver Certificate of Professional Competence” (DCPC) qualification in order to set minimum levels of training and knowledge required for such professional drivers going beyond merely holding a relevant driving licence. This was to raise driving standards and ultimately to improve road safety and the safety of the driver.

Why is it being changed?

- 2.3 The DCPC Regulations are written from the perspective of the UK being an EU member State, and some of the language used or referred to acknowledges this. This is not consistent with the UK no longer being a member State and would result in ambiguity.

What will it now do?

- 2.4 The changes are to adjust such language and references to recognise the UK is no longer a member State, to so eliminate any ambiguity, but otherwise to maintain the DCPC regime intact in the UK.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 The instrument was laid for sifting under paragraph 3 of Schedule 7 to the European Union (Withdrawal) Act 2018, on 19 July 2018, by the Parliamentary Under Secretary of State for Transport, Jesse Norman, who considered the appropriate Parliamentary

procedure for the instrument was that it should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the “negative procedure”), and made a statement to that effect as detailed in Part 2 of the Annex to this Explanatory Memorandum.

- 3.2 The Secondary Legislation Scrutiny Committee of the House of Lords, at its meeting on 4th September 2018, scrutinised the instrument and agreed that the negative procedure should apply to the instrument.
- 3.3 The European Statutory Instruments Committee of the House of Commons, at its meeting on 5th September 2018, scrutinised the instrument and agreed that the negative procedure should apply to the instrument.

***Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)***

- 3.4 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

#### **5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

#### **6. Legislative Context**

- 6.1 The DCPC Regulations were made under the powers of section 2(2) of the European Communities Act 1972 in compliance with the UK’s European treaty obligations to give effect to EU Directives.
- 6.2 The European Union (Withdrawal) Act 2018 repeals the European Communities Act 1972, but section 2 saves EU-derived domestic legislation so that it continues to have effect in domestic law on and after exit day. The DCPC Regulations are EU-derived domestic legislation and so will be preserved.
- 6.3 However they contain anomalous language which this instrument corrects pursuant to the power in section 8 of the 2018 Act.

#### **7. Policy background**

***What is being done and why?***

- 7.1 Upon withdrawal from the EU the UK will cease to be a member State, and accordingly will no longer be bound by EU Directive 2003/59/EC. This instrument is made in order that the UK will nevertheless continue to operate the statutory DCPC qualification regime for professional drivers of lorries, buses and coaches after it leaves the EU.
- 7.2 The effect of the instrument is to remove references to the UK as a “member State” and to make changes to reflect the fact that the regulatory regime, enabling the UK to

issue DCPCs to drivers, no longer arises as a consequence of obligations on the UK as a member State, but rather as a result of domestic law.

- 7.3 The result will be that drivers of relevant vehicles, who apply and qualify for a DCPC, will be issued with a UK DCPC rather than a DCPC which is issued by a member State. The UK will continue to recognise existing DCPCs and those issued by member States.
- 7.4 The Government wishes to maintain the DCPC regime to benefit driver standards and road safety and to facilitate, as far as possible, the ability of professional drivers with the qualification to continue to have access to member States, primarily in relation to the transport of goods. The changes to the DCPC Regulations are minor and technical in nature, and so the Regulations will continue to mirror the existing EU DCPC system such as to facilitate continued access of applicable UK drivers to EU, and indeed EEA, markets.
- 7.5 Furthermore the UK wishes to maintain the DCPC regime in relation to international road haulage operations under the European Conference of Ministers of Transport (ECMT) quota system, originally introduced in 1974. The UK, member States of the EU and various other States are participating members of this ECMT road haulage permit system for international road transport under which permits can be issued for heavy goods vehicle journeys through and between participating States. The ECMT system incorporates a “Quality Charter”<sup>1</sup> that requires all member countries to have in place a system of training and testing for the professional qualification of relevant drivers. Continuance of the DCPC as a domestic qualification would satisfy this condition of the “Quality Charter”.
- 7.6 Although the subject matter of this instrument is a transferred matter under the Northern Ireland Act 1998, at the time the EU Directive on CPC was made it was agreed between the then Secretary of State and devolved Northern Ireland administration that the Secretary of State would transpose the Directive for the whole of the UK.
- 7.7 The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate

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<sup>1</sup> “Quality Charter for International Road Haulage Operations under the ECMT Multilateral Quota System” (ITF (2015)3/FINAL of 5-6-15) available at “International Transport Forum” website (<https://itf-oecd.org>). Charter “CPC” requirements for drivers at Chapter III, section 2 (driver training).

effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

## **9. Consolidation**

9.1 There are no plans to consolidate the legislation amended by these Regulations.

## **10. Consultation outcome**

10.1 A public consultation was not considered necessary because the instrument makes minor technical amendments to an existing regime to maintain the status quo as far as possible. No impact upon stakeholders is envisaged.

## **11. Guidance**

11.1 The Driver and Vehicle Standards Agency produces guidance for any driver wishing to obtain a DCPC qualification. This guidance sets out how to apply for, obtain and maintain the qualification. This guidance will be updated in light of the UK's exit from the EU to explain any changes in relation to the qualification.

11.2 Guidance for persons wishing to become professional drivers of large vehicles is published on [www.gov.uk](http://www.gov.uk) and is available at: <https://www.gov.uk/become-lorry-bus-driver>.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because of this low level of impact and because the instrument relates to the maintenance of existing regulatory standards.

## **13. Regulating small business**

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No action has been taken to minimise the impact of the requirements on small businesses (employing up to 50 people) because the impact is assessed as zero or nominal.

## **14. Monitoring & review**

14.1 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

14.2 However provision is already made in the DCPC Regulations for five yearly reviews of their operation (regulation 14A).

## **15. Contact**

15.1 Mandy Lynch at the Driver & Vehicle Standards Agency, telephone: 0115 936 6097 or email: [Mandy.lynch@dvs.gov.uk](mailto:Mandy.lynch@dvs.gov.uk) can be contacted with any queries regarding the instrument.

- 15.2 Paul O'Sullivan, Deputy Director, Roads EU Exit, Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Jesse Norman, Parliamentary Under Secretary of State for Transport, can confirm that this Explanatory Memorandum meets the required standard.

# Annex

## Statements under the European Union (Withdrawal) Act 2018

### Part 1

#### Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.  State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority’s response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

## Part 2

### Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

#### 1. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State for Transport, Jesse Norman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Vehicle Drivers (Certificates of Professional Competence) (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because:

(a) the instrument does not contain provisions falling within paragraph 1(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 requiring it to be made under the affirmative procedure;

(b) the DCPC Regulations amended by the instrument were made under the negative procedure;

(c) the effect of the instrument is to maintain domestically the existing driver certificate of professional competence regime, originally introduced by the DCPC Regulations in 2007, but adjusting the language in the DCPC Regulations which would otherwise indicate the United Kingdom was a member State of the European Union. No substantive change is otherwise made to the DCPC Regulations.

#### 2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State for Transport, Jesse Norman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Vehicle Drivers (Certificates of Professional Competence) (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate”.

- 2.2 This is the case because: these Regulations are made in order that the UK can continue to operate a statutory DCPC qualification regime for professional drivers of lorries, buses and coaches, after it leaves the EU. The effect of these Regulations is to remove references to the UK as a “member State” and to make changes to reflect the fact that the regulatory regime, enabling the UK to operate and issue DCPCs to drivers, no longer arises as a consequence of obligations on the UK as a member State, but rather as a result of domestic law. The result will be that drivers are issued with a UK DCPC rather than a DCPC which is issued by a member State.

#### 3. Good reasons

- 3.1 The Parliamentary Under Secretary of State for Transport, Jesse Norman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:



“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 These are given in the policy background section of this Explanatory Memorandum (paragraphs 7.1 to 7.5).

#### **4. Equalities**

- 4.1 The Parliamentary Under Secretary of State for Transport, Jesse Norman, has made the following statement:

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

- 4.2 The Parliamentary Under Secretary of State for Transport, Jesse Norman has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Jesse Norman, Parliamentary Under Secretary of State for Transport, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010”.

#### **5. Explanations**

- 5.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.