EXPLANATORY MEMORANDUM TO

THE GOODS VEHICLES (LICENSING OF OPERATORS) (AMENDMENT) (NO. 2) REGULATIONS 2022

2022 No. [XXXX]

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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The purpose of this instrument ("SI No.2") is to correct a drafting error that has been identified within the Goods Vehicles (Licensing of Operators) (Amendment) Regulations 2022[1] ("SI No.1"), which came into force on 17th March 2022.

2.2 SI No.1 introduced changes to the goods vehicle operator licensing regimes, as applicable to Great Britain and Northern Ireland. The SI No.1 changes were required to fulfil obligations in the UK/EU Trade and Cooperation Agreement ("TCA")[2].

2.3 An error contained in SI No.1 applies a provision to the road passenger transport industry. This is against the policy intention of SI No.1 and the continuation of the provision would complicate the regulation of the road passenger transport industry. This statutory instrument corrects the drafting error.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 An amending instrument intended to have a similar effect and with this instrument's title has previously been laid for sifting as a draft negative instrument. It was brought forward further to the procedures specified in the European Union (Future Relationship) Act 2020[3] ("the 2020 Act"), Schedule 5, paragraph 6(3). However, following consideration by the Secondary Legislation Scrutiny Committee, the European Statutory Instruments Committee decided that SI No.2 should be subject to the affirmative resolution procedure. Therefore, this instrument is being laid in draft further to paragraph 6(1) of Schedule 5 to the 2020 Act.

3.2 These regulations correct a drafting error in SI No.1, which was laid in draft in Parliament on 24th January 2022, and came into force on 17th March 2022. The error is in regulation 7 of SI No.1 and is detailed further in paragraph 6.7 of this memorandum.

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[1] The Goods Vehicle (Licensing of Operators) (Amendment) Regulations 2022: https://www.legislation.gov.uk/uksi/2022/293/made

[2] The UK/EU Trade and Cooperation Agreement (TCA): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/982648/TS_8.2021_UK_EU_EAEC_Trade_and_Cooperation_Agreement.pdf

[3] EU Future Relationship Act 2020: https://www.legislation.gov.uk/ukpga/2020/29/contents

3.3 Because this instrument is making a correcting amendment, so that the impact of the error in SI No.1 does not affect the regulation of the passenger transport industry for longer than necessary, it is important that this instrument is made swiftly.

Early commencement

3.4 The provisions of this instrument will come into force the day after it is made. This is to ensure that there is no further delay to the correction to SI No.1.

3.5 The instrument does not impose any additional obligations on holders of operator licences involved in either the transport of goods or passengers by road. Indeed, it restores the regulatory regime associated with passenger transport that was in place prior to SI No.1 coming into effect.

4. Extent and Territorial Application

4.1 The territorial extent and application of Parts 1 and 2 of this instrument is England and Wales, Scotland and Northern Ireland.

4.2 The territorial extent and application of Part 3 of this instrument is England and Wales and Scotland.

4.3 The territorial extent and application of Part 4 of this instrument is Northern Ireland.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State at the Department for Transport, Baroness Vere has made the following statement regarding Human Rights.

"In my view the provisions of the Goods Vehicle (Licensing of Operators) (Amendment) (No.2) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 The Goods Vehicles (Licensing of Operators) Act 1995[4] ("the 1995 Act") and associated regulations provide the legislative framework for the licensing of road goods transport operators in Great Britain. The Public Passenger Vehicles Act 1981[5] provides the legislative framework for road passenger transport operators in Great Britain. Operator licensing is a reserved matter in Scotland and Wales.

6.2 Operator licensing is a devolved matter in Northern Ireland. The Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010[6] (the "2010 NI Act") provides the legislative framework for the licensing of road goods transport operators in Northern Ireland. The Transport Act (Northern Ireland) 1967[7] includes provisions relevant to the licensing of road passenger transport operators.

Inclusion of Northern Ireland

6.3 The Minister for Infrastructure in Northern Ireland, Nichola Mallon, has given her consent to the inclusion of Northern Ireland in relation to this statutory instrument.

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[4] The Goods Vehicles (Licensing of Operators) Act 1995: https://www.legislation.gov.uk/ukpga/1995/23/contents

[5] The Public Passenger Vehicles Act 1981: https://www.legislation.gov.uk/ukpga/1981/14/contents

[6] The Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010: https://www.legislation.gov.uk/nia/2010/2/contents

[7] The Transport Act (Northern Ireland) 1967: https://www.legislation.gov.uk/apni/1967/37/contents

6.4 Once the correction is in force, the policy objective of ensuring an equivalent legislative regime will continue to apply throughout the United Kingdom.

Retained EU Regulations

6.5 Regulation (EC) 1071/2009[8], has been retained (as "retained EU law") under section 3 of the European Union (Withdrawal) Act 2018[9] and, along with the UK legislation, concerns road transport operator licensing. The regulation was amended immediately following the end of the Implementation Period.

6.6 This instrument enables provisions of Regulation (EC) 1071/2009 Article 4 to be applied via domestic legislation to transport managers of road transport passenger operators, as they were prior to SI No.1 coming into force.

6.7 Regulation 7 of SI No.1 replaced provisions in Article 4 of Regulation (EC) 1071/2009 amending Schedule 3 of the 1995 Act and section 12A of the 2010 NI Act. The 1995 Act and 2010 NI Act apply to goods vehicles and not passenger transport vehicles. This instrument has the effect of restricting the changes made by SI No.1 to goods vehicle operators. Road passenger transport operators will therefore continue to be regulated via Article 4 of Regulation (EC) 1071/2009 and references to it in domestic legislation.

6.8 Because there is to be a revived Article 4, paragraph 2, of Regulation (EC) 1071/2009, 12A(3)(c) of the 2010 NI Act needs to be removed. This avoids a provision appropriate for transport managers of road passenger transport operators having any presence in legislation related to goods transport operators. Certain transitional provisions are also being modified because of the existence of this amending instrument.

6.9 The changes included in this legislation are intended to ensure that UK legislation correctly reflects the provisions included within the relevant sections of the TCA. Making these changes helps to ensure the policy objective of continued good access into the EU for UK vehicles transporting goods for trade and commercial purposes, particularly in respect of some light goods vehicles.

7. Policy background

What is being done and why?

7.1 Regulation 7 in SI No.1 has the effect of applying certain provisions to all transport managers of certain road goods vehicle operations and road passenger transport operations. The requirement for transport managers is designed to support safe and effective operations. It is one of the four key components of operator licensing. In being drafted in this way, Regulation 7 of SI No.1 incorrectly applied certain provisions to road passenger transport operators. This was not the policy intention. This instrument corrects that application.

7.2 Once the amendment in this instrument comes into force, the changes made by SI No.1 (including requirements relating to transport managers) will apply solely to goods vehicle operator licensing as required by the TCA. Road passenger transport is

[8] (EC) 1071/2009 established common rules across the European Union concerning the conditions that need to be complied with to pursue the occupation of a road transport operator, engaged in the transport of goods or passengers. Retained EUR 2009/1071: https://www.legislation.gov.uk/eur/2009/1071/contents

[9] The EU (Withdrawal) Act 2018: https://www.legislation.gov.uk/ukpga/2018/16/contents/enacted

governed under a separate title of the TCA and, therefore, changes implemented in relation to goods transport are not applicable to passenger transport.

7.3 The purpose of SI No.1 was to make the changes related to operator licensing required under the TCA. The error that was introduced by SI No.1 will mean that before this instrument comes into effect, the regulators (the Traffic Commissioners in Great Britain, and the Traffic Regulation Unit (TRU), part of the Department for Infrastructure, in Northern Ireland) will need to use other legal routes to ensure the consistency of a part of the operator licensing regime as it applies to passenger transport.

7.4 It is important to ensure that the length of time until the correction is made is minimised as far as possible.

Explanations

What did any law do before the changes to be made by this instrument?

7.5 Certain provisions regulating transport managers of road passenger transport operators rely on Article 4 of Regulation (EC) 1071/2009. Section 14ZA of the Public Passenger Vehicles Act 1981 relies on Article 4. Likewise, section 6A of the Transport Act (Northern Ireland) 1967 relies on Article 4.

Why is it being changed?

7.6 SI No.1 amended and replaced certain provisions of Article 4. These changes as enacted with effect from 17th March 2022 applied in respect of all transport managers, i.e., of road passenger and goods vehicle operators, without providing replacement provisions applicable to transport managers of road passenger transport operators, when it should have done. The purpose of this instrument is to correct this error as it applies to road passenger transport.

7.7 Once the change is made, the regime as it applies to transport managers working in the goods transport industry will continue to be included within the scope of the changes made by SI No.1, but those working in road passenger transport will no longer be within the scope of the SI No. 1 regulations.

What will it now do?

7.8 This instrument ensures the provisions based on Article 4 of Regulation (EC) 1071/2009 applying to road passenger transport managers are once again fully operative (having been erroneously revoked by SI No. 1).

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

8.2 This instrument does however relate to the implementation of the Future Relationship Agreement. It ensures an aspect of the implementation of the TCA applicable to the regulation of road transport managers is not erroneously applied to road passenger transport operations.

9. Consolidation

9.1 This instrument does not consolidate other regulations.

10. Consultation outcome

10.1 Details of the consultation held in relation to the changes to operator licensing are included in Section 10 of the Explanatory Memorandum for SI No.1

10.2 Because this instrument corrects a drafting error in that instrument, returning the legislation to the original policy intent, no further consultation has been carried out.

11. Guidance

11.1 Guidance to provide road transport operators with the information they need to prepare for the change in rules associated with SI No.1 was published on gov.uk in August 2021 and has been subsequently updated. Further updates as necessary will be published on the same page. This guidance can be found here: https://www.gov.uk/guidance/transport-goods-in-and-out-of-the-uk-using-vans-or-car-and-trailers-from-21-may-2022

12. Impact

12.1 There is no, or no significant, impact on 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 the Department estimates that the total cost to UK business is less than £5 million in total per year.

12.4 Making the correction ensures that, once SI No.2 is in force, the error affecting road passenger transport is remedied and SI No.1 will no longer apply to the regulation of road passenger transport.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. Along with SI No.1 it leads to no change in the regulation of road passenger transport.

14. Monitoring & review

14.1 This instrument will not be specifically monitored or reviewed. The approach to monitoring and review of SI No.1 is summarised in its Explanatory Memorandum.

15. Contact

15.1 Morag Rethans at the Department for Transport Telephone: 07342 089 293 or email: morag.rethans@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Duncan Price, Deputy Director for Road Freight Regulation, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Baroness Vere of Norbiton, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.