EXPLANATORY MEMORANDUM TO

THE MOTOR VEHICLES (DRIVING LICENCES) (AMENDMENT) (NO. 2) REGULATIONS 2021

2021 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 These Regulations make amendments to the requirement to undergo a practical car plus trailer (category B+E) driving test. The amendments will make such a test optional only; the entitlement to tow a trailer will be given to anybody passing, or who has passed, a car (category B) driving test from the coming into force of these Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument amends subordinate legislation made under section 2(2) of the European Communities Act 1972. It therefore engages the procedural and publication requirements of paragraphs 13 to 15 of Schedule 8 to the European Union (Withdrawal) Act 2018, which have been complied with.

3.2 However, by reason of urgency, the requirements of paragraph 14(2) to (5) of Schedule 8 to the European Union (Withdrawal) Act 2018 (publication in draft for 28 days and making of a scrutiny statement before laying) were not carried out. The Secretary of State has made the statement required in these circumstances by paragraph 14(6)(a) of Schedule 8 to that Act and it is published in Part 2 of the Annex.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales and Scotland.

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

5. European Convention on Human Rights

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

"In my view the provisions of the Motor Vehicles (Driving Licences) (Amendment) (No.2) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 The primary legislation for driving tests is contained in Section 89 of the Road Traffic Act 1988, whilst provisional licences are applied for under section 97. The secondary

legislation is the Motor Vehicles (Driving Licences) Regulations 1999. This instrument removes the requirement for a separate B+E test that had been made for the purpose of implementing Council Directive 91/439/EEC on Driving Licences (OJ No. L 237, 24.8.91, p. 1) and for general purposes, by the Motor Vehicles (Driving Licences) Regulations 1996, and consolidated and amended by various amendments to the Motor Vehicles (Driving Licences) Regulations 1999.

7. Policy background

What is being done and why?

7.1 The haulage sector has been experiencing a chronic shortage of HGV drivers worldwide for some time. In Great Britain, the issue has been further exacerbated by the coronavirus pandemic as driver testing had to be suspended for much of last year, meaning the shortage increased further. There are already reports of ongoing supply chain issues as a result of the HGV driver shortage, particularly in the fresh food supply chain, but it also affects supplies of fuel, medicines and medical equipment. Shortage issues have therefore intensified, with industry reporting shortages of around 76,000 drivers.

7.2 The Department for Transport and other Government Departments have worked closely with the haulage sector considering a range of options to improve the number of HGV drivers. As part of these measures a consultation closed on 7 September on changes to streamline the HGV driving licence regime and remove the requirement for a separate heavy trailer test for car drivers. Driving tests are conducted by Driver & Vehicle Standards Agency (DVSA) driving examiners. DVSA has already taken administrative action to increase capacity and offer more practical HGV tests but more is needed: there is a significantly increased demand for lorry tests following the shutdown of routine testing due to the pandemic, which could be delaying entry to the industry of potential drivers. These factors are added to the longer-term issues surrounding attracting and retaining drivers to the industry.

7.3 These legislative amendments are designed to urgently free up driving examiner time in order to increase the number of lorry tests that could be conducted; removing the need to undertake a B+E test could create up to an additional 2,400 test appointments each month.

Explanations

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

7.4 Prior to these amendments, from 1 January 1997, any person wishing to tow a trailer had to take a separate car plus trailer test. A separate category B+E entitlement would then show on a person's driving licence. Approximately 30,000 B+E tests are conducted by DVSA each year.

Why is it being changed?

7.5 This is being changed in order to urgently free up driving examiner time so that more lorry driving tests can be conducted. This should then provide drivers with a quicker access route into jobs in the haulage and logistics industries, with the intention of helping lessen the HGV driver shortage.

What will it now do?

7.6 These amendments mean that a person can now tow a heavy trailer once they hold a full category B driving licence; the need to take an additional B+E test is removed. However, there may be occasions when a person wishes to take the B+E test, possibly for employment or possibly to prove entitlement when driving outside of GB, so the test is expected to still exist as an option; it will just no longer be mandatory.

7.7 DVSA will continue to promote training to anyone considering driving a B+E vehicle.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018 (c. 16).

9. Consolidation

9.1 No consolidation is necessary.

10. Consultation outcome

10.1 The Consultation Paper, "HGV Driver Shortage – proposals to amend driver licensing and acquisition arrangements", ran between 10 August and 7 September 2021 and was available online via the Gov.UK website although responses were also received by direct communication with DVSA.

https://www.gov.uk/government/consultations/changes-to-hgv-and-bus-driving-tests-and-allowing-car-drivers-to-tow-a-trailer-without-an-extra-test/changes-to-hgv-and-bus-driving-tests-and-allowing-car-drivers-to-tow-a-trailer-without-an-extra-test

10.2 DVSA received responses from industry representative bodies, instructor trainers, road safety organisations, Trade Unions and members of the public, some of whom responded via their MPs.

10.3 9,541 responses to the Consultation Paper were received.

10.4 Initial responses to the consultation indicate that the majority of people supported this proposal; however, some responses did raise serios concerns about road safety aspects of the policy. A full response will be published and this will be undertaken as soon as is reasonably practicable. A summary of has already been published on the Gov.uk website.

https://www.gov.uk/government/consultations/changes-to-hgv-and-bus-driving-tests-and-allowing-car-drivers-to-tow-a-trailer-without-an-extra-test/public-feedback/summary-of-public-feedback-on-proposals-to-change-hgv-and-bus-driving-tests-and-allow-car-drivers-to-tow-trailers-without-a-test

11. Guidance

11.1 DVSA has notified its customers and stakeholders of these changes. Guidance for all customers has been published on the Gov.uk website.

https://www.gov.uk/guidance/new-rules-for-towing-a-trailer-or-caravan-with-a-car-from-autumn-2021

12. Impact

12.1 There is expected to be a significant impact on business, charities or voluntary bodies. While only initial analysis has been carried out, some businesses who solely provide B+E training will have significant negative distributional impact as they can no longer operate as before, although these do not fall within scope of the impacts counted under the Better Regulation Framework. Some of these impacts will be partially offset with benefits to businesses who no longer have to pay for B+E training.

12.2 The Department for Transport will keep the impacts of these changes under regular review the first of which will be published in three years' time and every five year thereafter. We will engage with training providers and insurers to test the response to this change and to explore how we can seek to ensure that any road safety concerns are addressed. We will also explore options for an industry led accreditation that could offer a standardised testing approach if that would be welcomed by the market, insurers and consumers.

12.3 There is expected to be a significant impact on the public sector. DVSA has already taken operational measures to restrict the delivery of the B+E driving test by up to 66% so the marginal improvements in testing capacity will be lower than this.

12.4 There may be a negative impact on road safety of these measures which will need to be carefully monitored by the Department: this is because more drivers will become eligible for towing a heavy trailer without their competence being tested in advance. With the current requirement of training and testing, there are around 1,000 accidents per year involving B+E vehicles and any increase in the number of B+E related accidents will need to be monitored following the coming into force of this legislation: in particular impacts that are felt disproportionately, and possibly by those not benefitting from the policy.

12.5 An Impact Assessment is in the process of being finalised and will be going through the official clearance process before being published, and therefore the impacts considered in this EM are indicative only. The Impact Assessment will be shared and published as soon as the required assurance process is undertaken by the Regulatory Policy Committee and for consideration as part of the debates.

13. Regulating small business

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

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is that we have been liaising with the training industry so that they are aware of the forthcoming changes and working with them on potential other options where voluntary training can be undertaken which they could provide.

13.3 The basis for the final decision on what action to take to assist small businesses has taken into account feedback from the training industry and their response to the public consultation.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that it will be formally reviewed three years after coming into force, and then every five years after this. The government will however routinely monitor any adverse impact on road safety through annual official casualty statistics.

14.2 A statutory review clause is included in the instrument.

15. Contact

15.1 Pauline Morgan at the Department for Transport Telephone: 07790 566834 or email: Pauline.Morgan@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Duncan Price, Deputy Director for Freight, Operator Licensing and Roadworthiness Division 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 for Transport at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

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) or 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) or 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) or 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) or 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) or 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 IP completion 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) or	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or 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 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament 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.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion 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 IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 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

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Explanations where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972

1.1 The Parliamentary Under Secretary of State for Transport, the Baroness Vere of Norbiton, has made the following statements in accordance with paragraph 15(3) of Schedule 8 to the European Union (Withdrawal) 2018 Act:

"Paragraph 15(3)(a): law which is relevant to the amendment:

The table in regulation 19 of the Motor Vehicles (Driving Licences) Regulations 1999 (S.I. 1999/2864), providing that a B category licence gives provisional entitlement to "B + E", was inserted by S.I. 2012/977. That statutory instrument was made under powers in both the Road Traffic Act 1988 and section 2(2) of the European Communities Act 1972 and it primarily implemented the requirements Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences. That Table is being amended by this instrument to omit references to "B + E" entitlement.

Paragraph 15(3)(b): effect of the amendment or revocation on retained EU law:

The overall effect of the amendments is to remove the requirement to undergo a practical car plus trailer (category B+E) driving test (and make consequential amendments to the provisional entitlements for "B + E" in the table in regulation 19 of the Motoro Vehicles (Driving Licences) Regulations 1999 to reflect the removal of that requirement). The amendments will make such a test optional only; the entitlement to tow a trailer will be given to anybody passing, or who has passed, a car (category B) driving test from the coming into force of these Regulations."

2. Scrutiny statement where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972

2.1 The Parliamentary Under Secretary of State for Transport, the Baroness Vere of Norbiton, has made the following statement in accordance with paragraph 14(6)(a) of the European Union (Withdrawal) Act 2018:

"I am of the opinion that, by reason of urgency, the requirements for the statutory instrument to be published in draft 28 days before it is laid, and for a scrutiny statement to be made before laying, should not apply.

Accelerating the legislation by forgoing the 28-day publication period will allow earlier laying of the legislation than would have otherwise been possible and strengthen the steps we have already taken to increase testing capacity and ease supply chain issues as quickly as possible. Arrangements will be in place to ensure that the changes made by the legislation are operationally effective as soon as the legislation is in force."

3. Good reasons

3.1 The Parliamentary Under Secretary of State for Transport, the Baroness Vere of Norbiton, has made the following statement in accordance with paragraph 15(2) of Schedule 8 to 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.

This is because of the need to ensure that we take urgent action to increase the number of drivers available in the logistics industry. A factor in this is how quickly they can secure the availability of a practical test conducted by Driver & Vehicle Standards Agency (DVSA) driving examiners. Making these legislative amendments will free up driving examiner time in order to increase the number of lorry driver tests that could be conducted by the DVSA; removing the need to undertake a B+E test could create up to an additional 2,400 test appointments each month. This measure will therefore significantly improve the capacity of DVSA to conduct such tests."