EXPLANATORY MEMORANDUM TO

THE GOODS VEHICLES (LICENSING OF OPERATORS) (TEMPORARY USE IN GREAT BRITAIN) (AMENDMENT) REGULATIONS 2010

2010 No. 804

1. 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 instrument amends the Goods Vehicles (Licensing of Operators) (Temporary Use in Great Britain) Regulations 1996 (S.I. 1996/2186) ("the 1996 Regulations") as a consequence of changes to European Union ("EU") legislation and a new bilateral agreement between the UK and Turkey.

2.2 The most significant change is the removal of the requirement for Turkish goods vehicles temporarily being used in Great Britain to carry a permit, as set out in Schedule 5 to the 1996 Regulations. This change gives effect to a bilateral International Road Transport agreement signed between the UK and Turkey on 20th May 2009 (Cm. 7820), which amended the agreement signed on 9th September 1977 between the UK and Turkey concerning International Road Transport (Cm. 7276).

2.3 The amendments also reflect the replacement of existing EU instruments concerning goods vehicle "cabotage" operations; that is the temporary use of a foreign vehicle to carry goods between points within the UK for hire or reward.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Regulation 2(2) of the instrument refers explicitly to Regulation (EC) 1072/2009. This is because although Articles 8 and 9 of Regulation 1072/2009 come into force before the other provisions which revoke Regulation (EEC) 3118/93, Regulation 1072/2009 does not explicitly provide for the amendment of Regulation 3118/93 before the revocation of Regulation 3118/93 takes effect, so the two EU Regulations have to be read together in the interim..

4. Legislative Context

4.1 Section 2(1) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act") prohibits the use of goods vehicles on roads in Great Britain for business purposes except under a licence issued under the Act. Section 57(6) allows the Secretary of State to make regulations modifying the effect of the provisions of the Act in relation to vehicles brought temporarily into Great Britain. Accordingly, the existing 1996 Regulations modify the requirements of section 2(1) of the 1995 Act in relation to the temporary use in Great Britain of certain foreign goods vehicles and Northern Ireland goods vehicles.

4.2 The instrument provides for a complete exemption from the effect of section 2(1) of the 1995 Act for Turkish goods vehicles used temporarily in the UK to carry goods on international journeys. This removes the previous requirement for Turkish goods vehicles to be used under a permit as set out in Schedule 5 to the 1996 Regulations. This gives effect to a bilateral agreement signed between the UK and Turkey on the subject of International Road Transport on 20th May 2009.

4.3 Turkish goods vehicles are not permitted to conduct "cabotage" operations in Great Britain and are subject to other operator licensing and drivers' hours rules to ensure they are operated safely while in the UK (further details are given in paragraph 7.3 in the policy background section of this Memorandum).

4.4 "Cabotage operations" (temporary use of a foreign vehicle to carry goods from point to point within the UK for hire or reward) by European hauliers are at present regulated by Council Regulation (EEC) No. 3118/93 of 25th October 1993 laying down conditions under which non-resident carriers may operate national road haulage services within a Member State ("Regulation 3118/93").

4.5 This legislation will be changed by:

(a) the coming into force on 14th May 2010 of articles 8 and 9 of Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21st October 2009 on common rules for access to the international road haulage market ("Regulation 1072/2009") which impose tighter rules on cabotage; and

(b) the complete replacement of Regulation 3118/93 by Regulation 1072/2009 on 4th December 2011.

4.6 The 1996 Regulations exempt foreign goods vehicles from the requirement to hold a UK operator's licence, where they are being used to carry out cabotage operations covered by the EU Regulations. If operations are not covered by this, the haulier will need a UK operator's licence and can be penalised for failure to have one.

4.7 It follows that the 1996 Regulations require amendment as a consequence of Regulation 1072/2009, both to deal with the period from 14th May 2010 to 4th December 2011 when both Regulation 3118/93 and Articles 8 and 9 of Regulation 1072/2009 are in force, and the period after this when Regulation 1072/2009 alone will be in force.

4.8 The requirement to hold an operator's licence in section 2(1) of the 1995 Act does not apply to foreign vehicles used by a haulier established in another Member State (and not established in the UK), where the vehicles are being used temporarily in the UK to carry goods on international journeys. Therefore such use of foreign goods vehicles for "international carriage" does not need to be exempted from the section 2(1) requirement by the 1996 Regulations. The 1996 Regulations therefore define "international carriage" as it is defined in Council Regulation (EEC) No 881/92 of 26th March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States ("Regulation 881/92").

4.9 On 4th December 2011, the definition of "international carriage" in article 2 of Regulation 881/92 will be replaced by that in Article 2(2) of Regulation 1072/2009. It follows that the 1996 Regulations will then also require amendment as a consequence of the repeal of Regulation 881/92. The definition is additionally important because it is used to contrast with "national carriage", which is part of the new definition of "cabotage operations" in Regulation 1072/2009 which will also apply from 4th December 2011.

5. Territorial Extent and Application

5.1 This instrument extends to and applies in England and Wales, and Scotland.

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

7.1 This instrument makes consequential amendments to the 1996 Regulations. This is as a result of a bilateral agreement between the UK and Turkey signed in Ankara on 20th May 2009 which agreed amendments to the Agreement signed on 9th September 1977 between the UK and Turkey concerning International Road Transport.

7.2 Turkish goods vehicles are now exempted entirely from the requirement to obtain an operator's licence as set out in section 2(1) of the 1995 Act. This instrument removes the previous requirement for Turkish goods vehicles to be used under a permit as set out in Schedule 5 to the 1996 Regulations.

7.3 Turkish goods vehicles are subject to their own domestic operators' licensing regime and to the European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport ("AETR"), which sets drivers' hours rules for goods vehicles over 3.5 tonnes (Cmnd 7401). Amendments are published in Cmnd 8572, Cmnd 9037, Cm. 1776, Cm. 3042 and Cm. 3135. The AETR Agreement is out of print, but a consolidated version of the Agreement, including all amendments, is available at:
http://www.unece.org/trans/doc/2006/sc1/ECE-TRANS-SC1-2006-02e.pdf.

7.4 The bilateral agreement signed in Ankara on 20th May 2009 provides for the liberalisation of international goods vehicle transport between the UK and Turkey. It does, however, maintain the requirement for goods vehicles from each of the countries to have a third country permit for journeys between the other country and a third country. This provision was retained at the request of Turkey for reasons of security and to allow Turkey to continue to monitor journeys through its territory to the territory of its neighbours. The UK does not wish to continue to issue third country permits to the small number of Turkish goods vehicles which make journeys on to third countries.

7.5 This instrument also updates the references in the 1996 Regulations to the EU cabotage rules, which are to change from 14th May 2010 and from 4th December 2011.

8. Consultation outcome

8.1 Close contact has been maintained with industry bodies throughout the decision making process which led to the signing of an agreement on the liberalisation of international goods vehicles transport between the UK and Turkey on 20th May 2009 in Ankara. All those consulted supported the liberalisation to which these Regulations give effect.

8.2 The new EU "cabotage" rules to which this instrument refers were consulted on separately in 2007. For further details, please see the explanatory memorandum to the Goods Vehicles (Licensing of Operators) (Amendments) Regulations 2010 (S.I. 2010/455).

9. Guidance

9.1 There is no specific guidance associated with the amendments made by this instrument.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument, as the new impact on businesses, charities or voluntary bodies is minimal, amounting to approximately £4000 per annum of direct savings to them as a consequence of not having to purchase permits to travel to Turkey any longer.

10.2 There will be cost savings of approximately £5230 per annum for the public sector resulting from the removal of the requirement for permits to be printed and issued to the Turkish Transport Ministry for use by Turkish hauliers.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The instrument does not set out to minimise the impact of the requirements on firms employing up to 20 people as the instrument should have no negative effect on them.

12. Monitoring & review

12.1 As the instrument only makes consequential changes its effect will not be kept under review.

13. Contact

Maria Ullah at the Department for Transport Tel: 0207 944 4639 or email: maria.ullah@dft.gsi.gov.uk can answer any queries regarding the instrument.