EXPLANATORY MEMORANDUM TO

THE GOODS VEHICLES (LICENSING OF OPERATORS) (TEMPORARY USE IN GREAT BRITAIN) (AMENDMENT) REGULATIONS 2021

2021 No. 1187

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 is to exempt non-UK goods vehicle operators from the requirement to hold an operator licence when their vehicles are being used for the purposes of cabotage permissible temporarily within Great Britain.

2.2 The temporary extension in cabotage that these regulations implement is associated with a clause contained within the 2021 Finance (No.2) Bill, which would affect the Motor Vehicles (International Circulation) Order 1975 ("the 1975 Order")[1]. This Bill is intended to have effect as from 28 October as a result of a motion of the House of Commons under the provisional Collection of Taxes Act 1968.

3. Matters of special interest to Parliament

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

3.1 The Department regrets that this instrument breaches the rule that statutory instruments subject to the negative procedure should normally be laid, and copies provided to the Committee, 21 days before the instrument comes into force. Having reviewed the current risks to supply chains related to acute lorry driver shortages and to the COVID-19 pandemic, the Government is acting promptly to ensure that the extra capacity and resilience for the supply chain are available as soon as possible.

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, Wales and Scotland. Operator licensing provisions are a devolved matter in Northern Ireland.

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.

[1] The 1975 Order: https://www.legislation.gov.uk/uksi/1975/1208/introduction/made

6. Legislative Context

6.1 This instrument makes regulatory changes to temporarily exempt foreign goods vehicles whilst carrying out certain cabotage operations, from the general requirement to hold an Operator's licence as required in section 2 of the Goods Vehicles (Licensing of Operators) Act 1995 (the "1995 Act"). Sections 2 and 57 of the 1995 Act allow for regulations to be made to modify provisions of the 1995 Act in relation to vehicles brought temporarily into Great Britain.

6.2 The Goods Vehicle (Licensing of Operators) Regulations 1995 (the "1995 Regulations") and the Goods Vehicles (Licensing of Operators) (Temporary Use in Great Britain) Regulations 1996 exempt vehicles brought into Great Britain temporarily from the requirement of an Operator's licence as defined in the 1995 Act. This includes in vehicles with a Community Licence (issued by EU Member States) and other foreign vehicles, in the context of international transport and in relation to the cabotage.

6.3 Section 2(2)(d) of the 1995 Act was used to create a new exemption for car transporters under paragraph 23A of Schedule 3 to the 1995 Regulations, to provide for additional cabotage rights for certain EU operators, operative permanently but for two specific time periods in a year.

6.4 This Regulation creates a further and temporary exemption from the requirement to hold an Operator's licence as defined in the 1995 Act for certain vehicles. This exemption is in addition to that available to EU operators which permits two transports in a 7-day period, further to Article 8 of retained EU Regulation EC 1072/2009[2].

6.5 A further exemption permitting "foreign goods vehicle" to carry out cabotage as set out in regulation 7 of the Goods Vehicles (Licensing of Operators) (Temporary Use in Great Britain) Regulations 1996 is also being provided for using powers provided by section 57 of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act")[3].

6.6 Consideration has been given as to whether this instrument is considered to be amending regulations made under s.2(2) of the European Communities Act 1972. It is the Department's view that this is not the case, as the provisions of the 1995 Regulations relevant to these amendments were made in reliance on powers provided for within the Goods Vehicles (Licensing of Operators) Act 1995. This approach is supported by reference to S.I. 2013/1750 which provided for the exemption under Paragraph 23A of Schedule 3 to the 1995 regulations which was made under powers solely conferred by the 1995 Act.

7. Policy background

What is being done and why?

7.1 Cabotage (in this context) is the transport of goods (or passengers) between two places in the same country by a transport operator from another country for the purposes of hire and reward. It is heavily restricted both in the UK and abroad.

[2] Retained 1072/2009: https://www.legislation.gov.uk/eur/2009/1072/contents
[3] The 1995 Act: https://www.legislation.gov.uk/ukpga/1995/23/contents

7.2 The temporary additional cabotage rights are being implemented, in order to provide more resilience in supply chains in the Great Britain, due to capacity issues connected with a shortage of heavy goods vehicle drivers. The UK is currently affected by well publicised shortages in drivers to move goods, which has been partly caused by the ongoing Covid-19 pandemic. We anticipate that extending cabotage rules will help to reduce the effects.

7.3 The temporary changes are to last until the end of April 2022 and permit foreign goods vehicles which entered the UK on international carriage to operate cabotage transports for no longer than within 14 days of entry into the UK. There is no restriction on the number of cabotage transports permitted during a 14-day period. The cabotage transports must operate within Great Britain.

7.4 Regulations may be made in Northern Ireland to enable additional cabotage between Great Britain and Northern Ireland and also within Northern Ireland. Decisions about such regulations are for the devolved institutions.

7.5 The permissions are not restricted by country. The temporary permission of additional cabotage rights is not part of a wider trade agreement or other mechanism that avoids the obligation under World Trade Organisation rules to offer the rights to all nations without favour.

7.6 In practice the vast majority of foreign-operated international transports into the UK are done so by operators established within the EU. Operators from other countries in the EEA and Switzerland have good access across the EU to the UK for international transport, but the restrictions by some EU Member States in practice restrict the volume of other non-EU operators reaching the UK.

Explanations

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

7.7 Currently, in accordance with the EU-UK Trade and Cooperation Agreement ("the TCA") the UK allows goods vehicle operators established in the EU rights to undertake up to 2 laden transports within 7 days of a laden entry on an international transport into the UK. Unladen movements are also permitted. These rights continue before, alongside and after any additional temporary rights have ceased. They are provided in accordance with the UK/EU Trade and Co-operation Agreement[4].

7.8 Other lesser access rights for EU operators were planned to be extinguished early in 2022[5]. These are one cabotage movement within 3 days of an unladen entry and access associated with combined transport. Those changes will have effect once the extension to cabotage associated with this instrument is withdrawn.

7.9 Cabotage by other foreign operators is not permitted except via special permissions on a case by case basis. The UK's bilateral road transport agreements with non-EU countries provide good access rights for international transports by operators based in wider Europe and also some countries just beyond. However, they do not provide anything beyond very limited cabotage rights.

7.10 The European Conference of Ministers of Transport (ECMT) system allows international transport using a fixed quota of permits within a 43-state system

[4] When the UK was a member of the EU, EU operators were able to undertake 3 cabotage movements in 7 days.
[5] Letter to EU Member States: https://www.itf-oecd.org/sites/default/files/uk_27_september_2021_1.pdf

including the UK and nearly all of geographical Europe, but it does not permit any cabotage rights.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to the withdrawal of the UK from the European Union, or the future relationship.

9. Consolidation

9.1 This instrument amends the 1995 Regulations in order to implement an extension to the cabotage regime that will apply to the operators of goods vehicles from outside Great Britain that are brought into Great Britain laden, and are subsequently used for the purposes of cabotage for a maximum of 14-days from the point of entry.

9.2 Because of the temporary nature of this change, we do not intend to consolidate the 1995 Regulations.

10. Consultation outcome

10.1 The 'Temporary Extension to Road Haulage Cabotage'[6] consultation opened on 14 October 2021 and closed on 21 October 2021. In addition to publication on gov.uk, it was publicised to stakeholders and the devolved administrations directly.

10.2 Responsibility for these matters is devolved in Northern Ireland, and Ministers there considered the position and have indicated they do not intend to apply a similar extension.

10.3 150 responses were received to the online web survey, 38 supporting a temporary extension to cabotage rules and 108 being against an extension. There were a further 4 "don't know" responses.

10.4 The majority of respondents to the online survey stated they were from Great Britain, but a small number of responses were also received from elsewhere, including the Netherlands, Romania, and Serbia.

10.5 We also received written free text responses via email from 11 respondents. 4 of these were against the proposals, 1 was supportive and 3 were cautiously supportive, subject to the final structure of the extension. The remainder did not appear to express a view for or against.

10.6 As part of these responses, representative bodies provided views about the proposals. Logistics UK supports a temporary extension to cabotage, but with a different extent to the lead proposal in the consultation. The RHA and Unite the Union oppose the temporary extension of cabotage.

10.7 Amongst respondents (individuals and businesses) against any extension concerns raised included about the effect on pay and conditions of the UK workforce, effects on haulage rates, pressure on lorry parking facilities and inconsistency with developing the UK workforce. Some of the respondents in favour indicated they considered an extension both useful and would benefit from it.

[6] Link to consultation: https://www.gov.uk/government/consultations/temporary-extension-to-road-haulage-cabotage/temporary-extension-to-road-haulage-cabotage-consultation.

10.8 A summary of the consultation and the Government response is to be published shortly.

11. Guidance

11.1 Guidance will be provided to the sector, to ensure that operators of Heavy Goods Vehicles are aware of what access rights have changed.

12. Impact

12.1 Because this measure is temporary, and only intended to last for up to 6 months, no formal impact assessment has been prepared.

12.2 These changes should have no impact on charities or the voluntary sector for this instrument, except via the general effects of increased supply chain resilience.

12.3 There is expected to be no impact upon the public sector because of these changes, except via the general effects of increased supply chain resilience.

13. Regulating small business

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

14. Monitoring & review

14.1 The Department for Transport will monitor feedback though statistics and stakeholder discussions.

14.2 A statutory review clause is not included, as the instrument will make or amend provision which is to cease to have effect before the end of the period of 5 years beginning with the commencement date, and therefore falls within the exemption set out in Section 28(3)(d)[7] of the Small Business, Enterprise and Employment Act 2015.

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 Parliamentary Under Secretary at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

[7] The Small Business, Enterprise & Employment Act 2015
https://www.legislation.gov.uk/ukpga/2015/26/section/28