EXPLANATORY MEMORANDUM TO

THE LICENSING OF OPERATORS AND INTERNATIONAL ROAD HAULAGE (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. 708

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 licensing of road haulage operators and the market for international road haulage are regulated by EU Regulations (EC) 1071/2009 and 1072/2009 and related domestic legislation respectively. This instrument remedies deficiencies in retained EU law and makes consequential amendments to related domestic legislation arising from the withdrawal of the UK from the EU. In particular, this instrument reflects the fact that the UK will not be able to issue 'Community licences' after it has left the EU by providing for broadly equivalent and adaptable arrangements for hauliers operating between the UK and Member States after Exit day.

Explanations

What did any relevant EU and domestic law do before exit day?

2.2 Regulation (EC) 1071/2009 has direct effect in Member States and creates a framework for the licensing of road haulage operators and public transport operators, setting out the conditions under which national licensing authorities could issue and withdraw operator licences.

2.3 Regulation (EC) 1072/2009 has direct effect in Member States and sets out the conditions under which road haulage operators from EU Member States could operate internationally and in other Member States under a 'Community licence' issued by the Member State in which the haulier is established. Under this Regulation, following delivery of a load to another Member State an EU haulier is permitted to carry out up to three cabotage operations in a period of 7 days in the Member State to which the original load was delivered.

2.4 Domestic legislation gives practical effect to the EU Regulations by setting out the procedures for UK hauliers to follow for applications for Community licences and for dealing with changes of circumstances or penalties for infringements. In addition, the legislation clarifies that EU hauliers who operate in the UK under a Community licence are exempted in domestic legislation from the obligation to hold an operator's licence.

Why is it being changed?

2.5 The changes are designed to ensure that the existing regulatory regime for operator licencing and international haulage of goods can remain effective whatever the future

arrangements are between the UK and EU Member States from Exit day. In the absence of these amendments some of the legislation, which was drafted in the context of the UK's membership of the EU, would either lack clarity or fail to operate effectively after Exit day. This instrument adjusts and modifies inappropriate references in recognition of the fact that the UK is no longer a Member State and will not have any obligations towards EU entities. In general, these Regulations will help to eliminate any ambiguity, but otherwise to maintain adherence to the general principles and procedures set out in the EU Regulations as they will apply in the UK. After Exit day, subject to any reciprocal arrangements being made, or not so made with the EU, UK hauliers will need to apply for a United Kingdom licence for the Community if they wish to operate in the EU, as the UK will no longer be able to issue Community licences.

2.6 A summary of the changes which are being made to the current legislation is below:

(a) Amendments are being made to the domestic provisions for operator licensing so that the exemption from those requirements which currently apply to EU hauliers may in future be capable of amendment by affirmative regulations to reflect the arrangements with the EU;

(b) Domestic regulations dealing with the processes in relation to Community licences are amended so that in future similar arrangements may apply in connection with UK Licences for the Community which will replace UK issued Community licences;

(c) Some retained EU law is being restated in a clearer and more appropriate way so that it can apply to the UK and its relevant regulatory and administrative bodies;

(d) Inappropriate arrangements, including where the European Commission currently has a decision making role, are being amended or omitted, to reflect the fact that the UK is no longer a Member State;

Obligations to EU institutions or bodies which will cease to operate effectively following EU Exit, such as the requirement to provide information to the Commission, are being removed. What will it now do?

2.7 The UK operator licensing regime will generally remain as at present. Provided that reciprocal arrangements can be made with the EU, haulage operators from Member States will be allowed to operate in the UK as previously. UK hauliers may apply for a United Kingdom Licence for the Community instead of a Community licence so that they may operate in the EU as before. If there is any change in these arrangements following Exit day, the UK will be able to adapt these arrangements in an appropriate way.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments and the Sifting Committees

3.1 None.

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)

3.2 The territorial application of this instrument varies between the provisions.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see sections 8 and 24(1) of the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is:

(a) England and Wales, Scotland and Northern Ireland in relation to regulation 1 and 11 of this instrument and for amendments that are being made to the Regulation (EC) 1071/2009 and Regulation (EC) 1072/2009 by regulations 9 and 13 respectively to this instrument;

(b) England and Wales and Scotland in relation to the domestic legislation being amended for those territories by regulations 2, 4, 5 and 10;

(c) Northern Ireland in relation to the domestic legislation being amended for that territory by regulations 3, 6, 7, 8 and 12.

4.2 The territorial application of this instrument is the same as the territorial extent of this instrument, as set out above.

5. European Convention on Human Rights

5.1 The Minister of State for Transport, Jesse Norman MP, has made the following statement regarding Human Rights:

"In my view the provisions of The Licensing of Operators and International Road Haulage (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 Regulation (EC) 1071/2009 establishes common rules concerning the conditions to be complied with in order to pursue the occupation of road transport operator. The term 'road transport operator' applies to operators engaged in the transport of passengers or the haulage of goods. In general these Regulations do not apply to vehicles used for the haulage of goods where the laden mass of the vehicle does not exceed 3.5, or those used to transport passengers exclusively for non-commercial purposes, or where the maximum authorised speed of the vehicle is 40kmh.

6.2 Regulation (EC) 1071/2009 sets out the requirements and conditions that need to be met by road transport operators, including in relation to qualifications, and financial standing and in relation to authorisation and compliance monitoring by the regulatory authorities. This Regulation needs to be amended so that it removes any deficiencies and remains effective as retained direct EU legislation after the Exit day.

6.3 Regulation (EC) No 1072/2009 establishes common rules on how the international road haulage market operates across the EU. It establishes a system of Community licences which can be issued by each member state to hauliers whose business is established in their country. In general, the possession of a Community licence enables a haulier to deliver a load to a recipient in another Member State without any further permit requirement being imposed for journeys within the Community. On having delivered such a load, the Regulations permit the haulier to carry out a limited number of cabotage deliveries before leaving that Member State. The Regulation

envisages that it may be necessary for Member States to suspend cabotage in their country to avoid serious disturbance of the national transport market and includes administrative procedures for this to be implemented. The Regulation also provides for a system of 'driver attestations" so that Member States can ensure that where hauliers employ drivers from third countries, such drivers are lawfully employed and are not subsequently prevented from undertaking the international carriage of goods.

6.4 Regulation (EC) 1072/2009 will become retained direct EU law after exit day but in order for it to work effectively it is necessary to amend the provisions to remove the deficiencies so that they can operate in an appropriate way.

6.5 The EU Regulations have direct effect so while those provisions are not duplicated in domestic legislation it is necessary to give them practical effect through amendments to related domestic legislation. In summary, consequential amendments are required to be made to the:

- Road Traffic (Foreign Vehicles) Act 1972 to ensure that the reference to Regulation (EC) 1072/2009 is a reference to that Regulation as it has effect in EU law;
- Goods Vehicles (Licensing of Operators) Act 1995 to remove the automatic exemption from the requirement to hold an operator licence which applies to hauliers who hold a Community licence. This exemption will in future be provided for through a corresponding amendment being made in the Goods Vehicles (Licensing of Operators) Regulations 1995 (see below);
- Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 to remove the automatic exemption from the requirement to hold an operator licence which applies to hauliers who hold a Community licence. This exemption will be provided through a corresponding amendment being made in the Goods Vehicles (Licensing of Operators) (Exemptions) Regulations (Northern Ireland) 2012 (see below);
- HGV Road User Levy Act 2013 to ensure that the reference to Regulation (EC) 1072/2009 is a reference to that Regulation as it has effect in EU law and to ensure consistency with the new terms for licences and attestations;
- Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)) to ensure that the reference to Regulation (EC) 1072/2009 is a reference to that Regulation as it has effect in EU and to amend a reference from a Community licence to a UK licence for the Community;
- Goods Vehicles (Licensing of Operators) Regulations 1995 (S.I. 1995/2869) to provide an exemption from the requirement to hold an operator licence to hauliers who hold a Community licence;
- Goods Vehicles (Community Licence) Regulations 2011 (S.I. 2011/2633) to adapt the applications and processes related Community licences so that after Exit day they will apply to UK licences for the Community which will be issued by the Traffic Commissioners in England and Wales and Scotland instead of a Community licence;
- Goods Vehicles (Licensing of Operators) (Exemptions) Regulations (Northern Ireland) 2012 (S.I. 2012/256) to provide an exemption from the operator licensing requirements in Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010;

- Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012 (S.I. 2012/257) to provide that references to "Department" mean the "Department for Infrastructure" which acts as the approvals authority for bodies authorised to provide training and examinations related to professional competence of road transport operators;
- Goods Vehicles (Community Licence) Regulations (Northern Ireland) 2013 (S.I. 2013/115) to adapt the applications and processes related Community licences so that after Exit day they will apply to UK licences for the Community which will be issued by the Department for Infrastructure instead of a Community licence;

6.6 The amendments made by this instrument to Regulation (EC) 1071/2009 are also relevant to the Common Rules for Access to the International Market for Coach and Bus Services (Amendment etc.) (EU Exit) Regulations 2019 which amends Regulation (EC) 1073/2009 concerning passenger transport operators.

7. Policy background

What is being done and why?

7.1 Regulation (EC) 1071/2009 provides a framework for the regulation of road transport operators in EU Member States as outlined in paragraphs 6.1 and 6.2. In the UK, the applications and monitoring regime for transport operators is managed by the Traffic Commissioners for England, Scotland and Wales and by the Department for Infrastructure in Northern Ireland. The EU Regulation permits Member States to make certain decisions on a discretionary basis for example, in connection with imposing proportionate and non-discriminatory additional requirements to be satisfied by road transport operators, requirements to hold certain documents on premises, types and degrees of serious infringements. In amending these discretionary elements of the Regulation which rely on nationally applicable requirements or policy, the general approach taken in the instrument is to make the decision making body the Secretary of State with respect to England and Wales and Scotland and the Minister for the Department for Infrastructure with respect to Northern Ireland.

7.2 Regulation (EC) 1072/2009 sets out the rules that are to apply to the international carriage of goods within the EU, including rights to carry goods on a temporary basis in a Member State in which the haulier is not resident (referred to as cabotage rights) as outlined in paragraphs 6.3 and 6.4.

7.3 Regulation (EC) 1072/2009 provides that the international carriage of goods by road should be conditional on the possession of a Community licence. The Regulation sets out the conditions governing the issue and withdrawal of Community licences and the types of carriage to which they apply, their periods of validity and the detailed rules for their use. It also establishes a system of driver attestations in order to allow Member States to check effectively whether drivers from third countries are lawfully employed or at the disposal of the haulier responsible for a given transport operation. Operators in England and Wales and Scotland who meet the requisite criteria can apply to a Traffic Commissioner if they require a Community licence in order to carry out road haulage activities in the EU. In Northern Ireland, the equivalent approvals body is the Department for Infrastructure.

7.4 The amendments made by this instrument maintain the broad structure of Regulation (EC) 1072/2009 while removing the inoperabilities and deficiencies. The amendments

recognise that the UK authorities will not be able to issue Community licences after Exit day because the UK will no longer be a Member State. In its place the UK authorities will issue an equivalent document referred to as a "UK licence for the Community" on the expectation that reciprocal arrangements between the UK and the EU are able to continue on the same terms as exist before the UK exists the EU. The UK will continue to recognise EU Community licences.

7.5 Amendments made by this instrument to Regulation (EC) 1072/2009 also permit EU hauliers to carry out cabotage arrangements as before Exit day. However, after Exit day, the referrals process to the European Commission where it is necessary to suspend cabotage will no longer apply to the UK if it decides to invoke this procedure. The current safeguard procedures operate through an administrative rather than legislative process. This instrument therefore makes appropriate and proportionate equivalent provision by providing that after Exit day, the Secretary of State may invoke the safeguard procedure by making an administrative Order for an initial period of 6 months, followed by a further extension of 6 months if it is appropriate to do so. Should it be necessary to extend the suspension beyond the 12 month period this could only be achieved by laying an instrument before Parliament which would be subject to the affirmative resolution procedure.

7.6 The European Commission has published its own proposal for a Regulation intended to address some of the consequences ensuing from the fact that EU rules regulating road freight transport, in particular Regulation (EC) 1072/ 2009, will no longer apply to the carriage of goods by road between the UK and the remaining Member States as from the withdrawal of the UK and in the absence of a withdrawal agreement (COM(2018) 895 final). The draft proposal lays down temporary measures governing the carriage of goods by road between the UK and the EU. In particular, subject to equivalent rights being granted by the UK to EU hauliers, it provides UK road haulage operators with rights to carry goods between the UK and Member States until 31 December 2019.

7.7 This instrument will enable the UK to make suitable arrangements for the international road haulage of goods whatever the arrangements are with the EU after Exit day. If there is agreement between the UK and the EU on how the international road haulage sector will operate after Exit day and which supersedes this instrument, it is intended this instrument will be revoked by any Bill that is introduced in Parliament to legislate for that agreement. .

7.8 The amendments to Regulation (EC) 1071/2009 and Regulation (EC) 1072/2009 in this instrument remove the inoperabilities and deficiencies in the legislation whilst retaining the substance of the provisions so that they remain effective and operable in the UK. Corresponding amendments to related domestic legislation are also being made by this instrument so that, taken together with the amendments to Regulation (EC) 1071/2009 and Regulation (EC) 1072/2009, they are coherent and capable of practical application.

7.9 There is a separate provision made by Regulation (EC) 1073/2009, on access to international passenger transport markets. This is to be the subject of separate amending legislation to deal with its deficiencies as discussed in paragraph 6.6.

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 to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under paragraph 21 of Schedule 7 to the EU Withdrawal Act, in conjunction with the section 8 power. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to the Explanatory Memorandum.

9. Consolidation

9.1 This legislation does not consolidate any previous legislation.

10. Consultation outcome

10.1 The Department has not conducted a public consultation on these Regulations, as they are broadly intended to maintain the regulatory regime currently in place (and, to the extent that they do not, the impacts will be on foreign hauliers, whom it is impractical to reach for their view).

11. Guidance

11.1 No guidance will be produced for these regulations. Such changes as the regulations make are minimal.

12. Impact

12.1 There is no impact on charities or voluntary bodies. There will be an impact on road haulage businesses; but this should be minimal as this instrument is based on the expectation that regime for operator licensing and international road haulage will be essentially identical to that which is currently in place.

12.2 The impact on the public sector falls solely on the Traffic Commissioners and the Northern Ireland Department for Infrastructure; but this should be minimal, as the haulage operator licensing regime will be essentially that currently in place.

12.3 An Impact Assessment has not been prepared for this instrument because it falls below the threshold under which only a *de minimis* assessment is required.

13. Regulating small business

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

13.2 The impact of the requirements on small businesses (employing up to 50 people) should not be significantly different from that on other hauliers. Therefore, the legislation does not make separate provision for small businesses, nor does the Government believe that it will have any differential impact on small businesses.

14. Monitoring & review

14.1 The Traffic Commissioners (responsible for regulating the industry in Great Britain) have a duty to report to the Secretary of State on their activities and the sectors which they regulate. In addition, the Department for Transport has close and frequent

engagement with the industry's professional bodies. The approach to monitoring of this legislation will be informal, drawing on existing sources of intelligence.

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

15. Contact

15.1 Edward Bunting at the Department for Transport (telephone: 07798 843954 or email: edward.bunting@dft.gov.uk) can answer any queries regarding the instrument.

15.2 Paul O'Sullivan, Deputy Director for Roads EU Exit, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jesse Norman MP, Minister of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1Table 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. Appropriateness statement

1.1 The Minister of State, Jesse Norman MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Licensing of Operators and International Road Haulage (Amendment etc.) (EU Exit) Regulations 2019 does no more than is appropriate".

1.2 This is the case because the legislation makes only those minimal changes to the provisions of the EU Regulations that will become retained EU law, so as to ensure that they continue to operate effectively after the UK's withdrawal from the EU. The legislation makes changes to domestic legislation that are consequential to the changes needed for the EU Regulations.

2. Good reasons

2.1 The Minister of State, Jesse Norman MP, 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".

2.2 These are set out in paragraphs 6.1 – 6.5 and 7.1 – 7.8 of this explanatory memorandum.

3. Equalities

3.1 The Minister of State, Jesse Norman MP, 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".

The effect of this instrument is to ensure that existing rules concerning social conditions for drivers of haulage vehicles continue to apply via domestic law on and after Exit day.

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.