EXPLANATORY MEMORANDUM TO

THE GOODS VEHICLE OPERATORS (QUALIFICATIONS) (AMENDMENT) REGULATIONS 2004

2004 No.3222

THE PUBLIC SERVICE VEHICLE OPERATORS (QUALIFICATIONS) (AMENDMENT) REGULATIONS 2004

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1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

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

2. Description

2.1 These new Regulations make the following amendments in order to remedy a defect in the implementation of Council Directive 96/26EC as amended by Council Directive 98/76EC.

2.2 The minimum amounts for financial resources which professional hauliers (Goods Vehicles) and bus and coach operators (Public Service Vehicles - PSVs) must have available in order to hold an operator's licence, which are currently applied to hauliers and PSV operators who operate internationally, are applied by the Regulations also to those who operate solely in Great Britain.

2.3 In the case of PSV operators, the requirements will cease to apply to restricted PSV operator's licences and apply to standard licences only.

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

3.1 These Regulations correct defects in amendments made to the Goods Vehicles (Licensing of Operators) Act 1995 and the Public Passenger Vehicle Act 1981 by, respectively, the Goods Vehicle Operators (Qualifications) Regulations 1999 (S.I. 1999/2430) and the Public Service Vehicle Operators (Qualifications) Regulations 1999 (S.I. 1999/2431). The Department for Transport is therefore applying the procedure for free issue of these Regulations.

4. Legislative Background

4.1 Council Directive 96/26EC sets out the requirements for admission to the occupation of road haulage operator and road passenger transport operator. EC 96/26, among other requirements, specifies the minimum amount of financial resources per vehicle a licence holder, or applicant, must have in reserve to demonstrate financial standing. The sums were expressed in ECUs in that Directive which contained a derogation permitting lower amounts for operators who operated only in their own country.

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4.2 Council Directive 98/76EC made a number of amendments to EC 96/26. These included a substituted Article 3.3(c) which specified Euros, instead of ECUs, for the minimum financial resources. Those amounts are set out in paragraph 6 of Schedule 3 to the Goods Vehicle (Licensing of Operators) Act 1995 and in paragraph 2 of Schedule 3 of the Public Passenger Vehicles Act 1981, as amended by the Goods Vehicle Operators (Qualifications) Regulations 1999 (S.I. 1999/2430) and the Public Service Vehicle Operators (Qualifications) Regulations 1999 (S.I. 1991/2431).

4.3 Article 3.3(c) as amended requires non- Euro participating member states to fix the amount in their national currencies by applying the rate published in the Official Journal of the European Community every five years thereafter at the beginning of October. The amount thus fixed is to apply from the following 1st January. When the Department was carrying out the review to fix the rate to take effect on 1st January 2005, it became apparent to the Department that the derogation for operators who operate only in their own country had been removed. This was contrary to the Department's view at the time of the negotiations in 1998 and its understanding of the effect of the amendments made by EC 98/76. As the derogation has ceased to apply, all professional operators, whether operating internationally or just within their own country, must meet the minimum financial requirements set out in EC 96/26 as amended.

4.4 The application of the minimum amounts in both sets of 1999 Regulations to international operations only was therefore erroneous. These new Regulations correct the error by applying the requirements to operators of domestic services as well as international services.

4.5 Another error was found in respect of PSVs, in that the 1999 Regulations (S.I. 1999/2431) had applied the requirements to PSV operators licences generally. In fact PSV operators licences which are 'restricted' (covering up to 2 vehicles with no more than 16 passenger seats and subject to other restrictions) are covered by an exemption in Article 2.3 of the Directive for operations that have only a minor impact on the transport market. The amendment therefore applies the amounts to standard PSV operators licences only.

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 David Jamieson, Parliamentary Under Secretary of State, has made the following statement regarding Human Rights:

In my view the provisions of the Goods Vehicle Operators (Qualifications) (Amendment) Regulations 2004 are compatible with the Convention rights.

6.2 Charlotte Atkins, Parliamentary Under Secretary of State, has made the following statement regarding Human Rights:

In my view the provisions of the Public Service Vehicle Operators (Qualifications) (Amendment) Regulations 2004 are compatible with the Convention rights.

7. Policy background

7.1 EC Directive 96/26 lays down standard conditions for the licence granted to road haulage and passenger transport operators. The holder of an operator's licence must be of good repute; professionally competent; and have the appropriate level of financial resources to ensure the undertaking can be run properly and safely. The purposes are to allow free movement in the transport market in member states and to improve road safety.

7.2 The Directive defines all three requirements. Financial standing is defined as having minimum amounts of capital and reserves per vehicle. This is intended to ensure that the operator has enough resources to maintain vehicles safely and to cover the overheads of the business. Operators who cannot meet this requirement can lose their licence. In Great Britain, professional operators need a standard licence, or in the case of very small scale PSV operators a restricted licence, to operate nationally and a standard international licence, or restricted PSV licence for international operations

7.3 At present standard international licence holders must demonstrate that they have reserves continuously available of £5400 (9,000 Euro) for the first vehicle and £3000 (5,000 Euro) for each additional vehicle used under the licence. For standard national licence holders, the amounts have not hitherto been specified in statute (as it was believed that they were not subject to the EC Directive) but have been set administratively by the Traffic Commissioners at £4300 for the first vehicle and £2400 for each additional vehicle/PSV over 16 seats, and £1500 for each additional PSV 16 or fewer seats. In practice these sums are much lower than the annual costs of operating a vehicle. For example, on the basis of figures collected by the goods vehicle trade association, the Freight Transport Association, it costs some £54,400 per annum to run a 17 tonnes rigid lorry. The Department for Transport estimates that the cost of operating a local bus service is £1.08 per vehicle kilometre so if a bus runs an average of 600 miles per week, it would cost over £50,000 per year.

7.4 As a result of the review of the exchange rate required by the Directive, the Department concluded that the Directive had removed the derogation for holders of standard national licences and that the same rates are to be applied to all eligible professional operators holding British licences. The effect is to increase financial standing minimum amounts by up to 44% for standard national licences holders. The new figures are £6200 for the first vehicle and £3400 for each additional vehicle regardless of size, in line with the Directive. Many operators exceed the minimum requirements so it has not been possible to work out how many would be affected by the increase in the minima.

7.5 The industry has been given three months notice of the change. One trade association, the Road Haulage Association, has complained about the effect on its members. It is not a matter of interest to the general public, though the public is very concerned about road safety in general and has the expectation that buses and coaches in particular are well maintained and operated safely. An adequate level of financial resources is therefore a critical factor.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum

8.2 The impact on the public sector is minimal.

9. Contact

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Steve Blackmore (for PSVs) - tel: 020 7944 2275 or email: Steve.blackmore@dft.gsi.gov.uk
at the Department for Transport can answer any queries regarding the instruments.

Regulatory Impact Assessment

Goods Vehicle Operators (Qualifications) (Amendment) Regulations 2004

and

Public Service Vehicle Operators (Qualifications) (Amendment) Regulations 2004

Policy Objective

To ensure compliance with EU rules requiring all holders of Goods Vehicle or Public Service Vehicle (PSV – bus or coach) operator licences to meet requirements for the minimum financial reserves required in order to operate their vehicles safely and to administer their businesses.

Issue

The impact of the increases in the minimum amount of financial resources on holders of goods vehicle and PSV operator licences who operate solely in Great Britain.

Background

EC Directive 96/26 sets out the requirements for access to the occupation of road haulage operator and road passenger transport operator. In Great Britain, operators who are within scope of the Directive and make international journeys must hold a standard international licence. Those working in the national market only must hold either a standard international or standard national licence. (Restricted licences are issued to classes of operator who require a licence under domestic legislation but fall outside the EC Directive or benefit from a derogation from it).To apply for and to hold an operator's licence, an operator must have sufficient capital or reserves to maintain each vehicle safely and to run the business. The Directive sets out the minimum sums necessary to demonstrate this for the first vehicle and a lesser amount for each additional vehicle used.

Directive 96/26 contained a derogation which allowed lower minima to be set for operators working in national markets only. The licensing authorities, Traffic Commissioners, set the minimum amounts applicable to standard licence holders and chose to set these at 80% of the amounts set in the Directive. The Commissioners apply the standards to applicants for licences and licence holders and are required to check regularly that operators continue to comply.

In 1998 the Directive was amended. At the time, the Department's interpretation of the amending Directive (98/76) was that this derogation had been retained. However it is now clear that the derogation was removed so the Government must set the new limits for Traffic Commissioners to apply in the case of both standard international and standard national licences.

EC 96/26 as amended expresses the minimum amounts in Euros and requires non Euro participating member states to check the exchange rate of their currencies every five years against the value of the Euro on the first working day of October and to revise the amounts. A review was due in 2004 and will be implemented form 1 January 2005. The result will be an increase in the minima by up to 12% for standard international licence holders and up to 44% for standard national licence holders.

Options

Now that the application of EC 96/26 (as amended), has been clarified, the Government is obliged to implement it as intended.

Who is affected

All operator licence holders will be affected by the increase in the minimum amounts but in particular professional hauliers and PSV operators who hold standard national licences, in practice the majority of cases. Traffic Commissioners will check that operators meet the revised standards when their licences are due for continuation at the five year point. However the revised standards will apply from 1 January 2005 to new applicants for licences and operators who apply to increase the number of vehicles on their licences, or who come to a Traffic Commissioner's attention for other reasons.

Risk

The Government will not be fully complying with the EU Directive 96/26 (as amended) and could face infraction proceedings.

Business sectors affected

All professional hauliers and PSVs operators for hire and reward will be affected by the increase in the minima but the measure affects in particular those who currently hold standard national licences

Equity and fairness

All operators in the sectors are equally affected but in particular those who may be operating on low profit margins.

Costs and benefits

The increase in the minimum amounts required to demonstrate financial standing is not a direct cost to the industry though it may affect investment decisions. These are in any case a very small part of the annual running costs of a heavy goods vehicle, estimated by the industry as some £54,400 for a 17 tonnes rigid vehicle running 45,000 miles a year. For a local bus running 600 miles a week, the annual operating costs are about £50,000. There are a range of ways in which operators can demonstrate they have the assets available.

The benefit is to road safety since it is in the public interest that operators have enough resources available to maintain the number of vehicles they choose to run, and to administer their businesses properly.

Competition issues

A similar requirement applies to professional hauliers and bus and coach operators in other member states. These regulations simply bring GB operators into line with those in the Euro countries.

Compliance

Operators are required to give evidence of their financial standing, among other licence requirements, every five years or if they apply for authorisation to add vehicles to a licence or come to the attention of a Traffic Commissioner for other reasons. If operators fail to meet the financial standing requirements, Traffic Commissioners can take appropriate action against their licence, for example by reducing the number of authorised vehicles to match the funds available.

Consultation

Representative bodies have been given three months notice of the changes to the minimum requirements.

Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the cost

signed date

David Jamieson
Parliamentary Under Secretary of State
Department for Transport

Contact Point

Neil Priest at the Department for Transport Tel: 020 7944 2141 or e-mail neil.priest@dft.gsi.gov.uk can answer any questions on goods vehicles.

Steve Blackmore at the Department for Transport Tel: 020 7944 2275 or e-mail steve.blackmore@dft.gsi.gov.uk can answer any question on buses or coaches.