EXPLANATORY MEMORANDUM TO

THE GOODS VEHICLES (COMMUNITY LICENCES) REGULATIONS 2011

2011 No. 2633

AND
THE PUBLIC SERVICE VEHICLES (COMMUNITY LICENCES) REGULATIONS 2011

2011 No. 2634

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

2. Purpose of the instrument

2.1 The two instruments implement certain aspects of EU Regulations 1072/2009 and 1073/2009, on common rules for access to the international markets for goods vehicles and passenger vehicles respectively. They replace existing domestic Regulations in both fields, and include additional provisions – in particular to enforce the rules on driver attestations (in relation to goods vehicles) and authorisations (in relation to passenger vehicles).

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

None.

4. Legislative Context

4.1 Regulations 1072/2009 and 1073/2009 are part of an overall package of three EU Road Transport Regulations ("the Road Transport Package") – all of which require some form of implementation by 4thPP December 2011. The third one is Regulation 1071/2009 on common rules for access to the occupation of road transport operator, which has its own implementing Regulations (namely the Road Transport Operator Regulations 2011) and Explanatory Memorandum.

UUThe Goods Vehicles (Community Licences) Regulations 2011 ("the Goods Regulations")

4.2 The Goods Vehicles (Community Authorisations) Regulations 1992 (SI 1992/3077) gave effect in the United Kingdom to Council Regulation (EEC) No 881/92, which established a Community-wide authorisation (which is essentially a Community licence) allowing goods vehicles access to the market in the carriage of goods by road between Member States. Regulation (EC) No 484/2002 subsequently amended Council

Regulation 881/92 so as to introduce a new driver attestation requirement. In addition to providing for enforcement of the requirement for a Community licence, the Goods Regulations cover driver attestations.

4.3 A number of EU measures, in particular Council Regulation 881/92, are repealed and recast by Regulation 1072/2009. Whilst most of Regulation 1072/2009 will come into force on 4th December 2011, provisions relating to goods vehicle cabotage (which is the temporary use of a foreign vehicle to carry goods from point to point for hire and reward within Great Britain or between Great Britain and Northern Ireland) came into force on 14th May 2010 and were implemented separately[1].

The Public Service Vehicles (Community Licences) Regulations 2011 ("the Passenger Regulations")

4.4 The Public Service Vehicles (Community Licences) Regulations 1999 (SI 1999/1322) gave effect in Great Britain to aspects of Council Regulation (EEC) No 684/92, which established a Community-wide licence allowing carriers operating public service vehicles access to the market for the international carriage of passengers by road. In addition the Road Transport (Passenger Vehicles Cabotage) Regulations 1999 (SI 1999/3413) gave effect in Great Britain to aspects of Council Regulation (EC) No 12/98, which laid down the conditions under which road passenger transport carriers of Member States may operate passenger cabotage transport operations. The term "UK cabotage operations" is defined in the Passenger Regulations by reference to Article 2(7) of Regulation 1073/2009. It has a similar meaning to that in the Goods context, but is not restricted to services operating for hire and reward.

4.5 Regulation 1073/2009 repeals and recasts Council Regulations 684/92 and 12/98. It gives effect to existing requirements for a Community licence, an authorisation (in the case of regular services) and control documents (in the case of occasional services). The Passenger Regulations will replace both of the domestic Regulations referred to in the paragraph directly above.

5. Territorial Extent and Application

5.1 The instruments extend to Great Britain.

5.2 The Department understands that the intention is that similar legislation will be made in Northern Ireland.

6. European Convention on Human Rights

Mike Penning MP has made the following statement regarding Human Rights:

In my view the provisions of the Goods Vehicles (Community Licences) Regulations 2011 and of the Public Service Vehicles (Community Licences) Regulations 2011 are compatible with the Convention rights.

7. Policy background

[1] See S.I. 2010/455, 2010/771 and 2010/804.

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

7.1 Both instruments retain existing criminal offences (unless a decision has been taken that the offence is unnecessary or that a lower level fine or an administrative penalty would be more appropriate), and neither creates new criminal offences.

7.2 Under both instruments it is no longer a criminal offence to fail to keep and present documents in accordance with the rules laid down in EU law. The rationale is as follows:

- Operators who are based in Great Britain will be covered by domestic licensing requirements when operating in Great Britain, and so will not be asked to produce documents in relation to Community licences for inspection (accordingly such an offence would not be required for enforcement against domestic operators).
- If necessary, action could be taken against foreign operators for failure to possess a Community licence under regulation 4 of either instrument - with breaches of requirements to keep and present documents being reported through national registers to their own Member States if appropriate.
- Operators from Great Britain who breach EU requirements to keep and present documents when operating in other Member States, could be reported to the appropriate authority in Great Britain via the national registers. Thereafter action could be taken if appropriate under the provisions in domestic legislation which relate to an operator's good repute[2]. Loss of good repute can lead to an operator's domestic and Community licences being withdrawn.

7.3 Similarly, under both instruments there is no longer a criminal offence of failing to return withdrawn documents. The Department considers that the offence is not required because:

- Action could be taken, under regulation 4 of either SI, against an operator who continues to use a withdrawn Community licence (because once the licence is withdrawn it is no longer valid).
- If withdrawn driver attestations (in the case of Regulation 1072/2009) or authorisations (in the case of Regulation 1073/2009) continue to be used by an operator, action could be taken against that operator using the good repute provisions referred to above. In addition when a driver attestation is withdrawn, the operator should be informed that the document needs to be returned immediately to the authority who issued it.
- If withdrawn documents are misappropriated by someone who is not an operator, then action could potentially be taken against that person under fraud legislation.

7.4 Under both instruments it is no longer a criminal offence to fail to supply information required by a competent authority, for the purpose of deciding whether an operator satisfies the conditions required in order to hold a Community licence. Instead, in such circumstances an existing Community licence (and driver attestation in the case of the Goods Regulations or authorisation in the case of the Passenger Regulations) may

[2] Section 14(1) of the Public Passenger Vehicles Act 1981 requires the holders of both standard and restricted operator licences to satisfy the requirement of good repute. Section 13(3) of the Goods Vehicles (Licensing of Operators) Act 1995 requires the holder of a standard operator licence to satisfy the requirement of good repute.

be withdrawn by the competent authority, or the competent authority may refuse an application for issue. (A driver attestation is required to be issued under Article 5 of Regulation 1072/2009 if the holder of a Community licence employs a third country national, to show that the driver is lawfully employed. An authorisation is required to be issued under Article 6 of Regulation 1073/2009 in order for the holder of a Community licence to lawfully provide regular services.)

7.5 For the purposes of driver attestations (required under the Goods Regulations) and authorisations (required under the Passenger Regulations), the competent authority is the Secretary of State. There is a right of appeal to a traffic commissioner in the case of driver attestations (this being a right of appeal to any traffic commissioner, and not just to the traffic commissioner who is the competent authority in relation to the relevant Community licence).

7.6 In relation to the authorisation requirement in Regulation 1073/2009, it is not considered necessary to provide a right of appeal against the refusal to issue or the withdrawal of authorisations (ie: for operators from Great Britain who wish to carry out international operations which are regular services in other Member States). This is because in practice the authorisation hinges on the Community licence; in other words if the Community licence was withdrawn then the authorisation would be withdrawn, and if the Community licence was reinstated then the authorisation would be reinstated too. (Regulation 7 of the Passenger Regulations provides for the withdrawal of a Community licence but not an authorisation, whereas regulation 7 of the Goods Regulations provides for the withdrawal of both a Community licence and a driver attestation. The difference is because Article 21 of Regulation 1073/2009 makes clear provision for when an authorisation should be withdrawn, whereas Article 12 of Regulation 1072/2009 requires some form of implementation in respect of the withdrawal of a driver attestation.)

7.7 Both instruments contain a "power to stop" provision as a consequence of the Road Vehicles (Power to Stop) Regulations 2011 (SI 2011/996) having recently amended existing domestic Regulations in both fields.

7.8 Under Article 4(2) of Regulation 1072/2009 and Article 4(4) of Regulation 1073/2009, existing Community licences remain valid (these were known as "Community authorisations" in the case of goods vehicles). This means that existing Community licences will not need to be reissued so as to correspond with the model set out in the respective EU Regulations. The effect of the provisions in regulation 6 of both instruments is that the holders of documents issued before 4th December 2011 (ie: Community authorisations and driver attestations issued under Council Regulation 881/92 and Community licences and authorisations issued under Council Regulation 684/92) will be subject to all the provisions of the new instruments (being the Goods Regulations or the Passenger Regulations, as the case may be).

7.9 While regulation 17 of the Passenger Regulations amends the Public Passenger Vehicles Act 1981 ("the 1981 Act") so that the misuse of control documents in UK cabotage operations will continue to be a criminal offence, the Department considers that forgery and many forms of misuse of Community licences would be offences under the Fraud Act 2006 (and accordingly that section 65 of the 1981 Act need not be amended to cover Community licences as well).

Future work

7.10 The Department for Transport considers that the Goods Regulations and the Passenger Regulations make all the provision which is necessary in order to give full effect to Regulations 1072/2009 and 1073/2009 respectively. When resources permit, it is intended that changes will also be made to Schedule 3 to the Road Traffic Offenders Act 1988 and to secondary legislation which is relevant to the Graduated Fixed Penalties and Deposits Scheme[3], for the purpose of updating these to reflect the offences which the Goods Regulations and the Passenger Regulations provide for.

7.11 The Department for Transport also proposes to make a statutory instrument, for commencement by mid-2012, which will bring about changes to the wider traffic commissioner legislative structure in Great Britain. At present each traffic area has a unique traffic commissioner, who deals with matters relating to his or her traffic area; whereas following the proposed changes, the connection between a traffic commissioner and a particular traffic area will cease, in favour of a pool of traffic commissioners controlled by a senior traffic commissioner.

- ***Consolidation***

7.12 As existing statutory instruments are being repealed and replaced, the consolidation of relevant legislation is not an issue.

8. Consultation outcome

8.1 A twelve week formal public consultation on the Road Transport Package took place between 7th December 2007 and 29th February 2008. The consultation explained the differences between the proposals and current law and included an Impact Assessment of likely costs and benefits The response to the consultation was mainly positive and is available on the Department's website at:
http://www.dft.gov.uk/consultations/closed/2011-11/

9. Guidance

9.1 There is no specific guidance associated with the instruments. However traffic commissioners may consider it appropriate to publish guidance on the process for appealing against a decision of the Secretary of State not to issue or to withdraw a driver attestation (in relation to the Goods Regulations). In addition the Department has taken steps to ensure that stakeholders are informed of the proposals**.** The two instruments were discussed when officials met with the main trade associations to discuss their responses to the public consultation on implementing EU Regulation 1071/2009. They were also informed in writing on 17th October 2011 of the proposals.

10 Impact

10.1 The impact on business, charities or voluntary bodies is unlikely to be significant.

10.2 The impact on the public sector is minimal.

[3] The following instruments may require amendment: the Fixed Penalty Offences Order 2009 (S.I. 2009/483), the Fixed Penalty (Amendment) Order 2009 (S.I. 2009/488), the Road Safety (Financial Penalty Deposit) Order 2009 (S.I. 2009/491), and the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009 (S.I. 2009/492).

10.3 An Impact Assessment has not been prepared for these instruments as such. However an Impact Assessment has been prepared on the effects of the provisions of EU Regulations 1071/2009, 1072/2009 and 1073/2009. It is attached to this memorandum and will be published alongside it on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to make the minimum provision necessary to give effect to obligations arising under the relevant EU Regulations and no new criminal offences have been introduced.

12. Monitoring and review

12.1 The Department for Transport will monitor feedback through statistics and stakeholder discussions. In addition a review clause has been included in both instruments in line with the Government's Guiding Principles for EU legislation.

13. Contact

13.1 Francis Liston at the Department for Transport, telephone number 020 7944 4503 or e-mail: francis.liston@dft.gsi.gov.uk, can answer any queries regarding the instrument on goods vehicles.

13.2 Ben Jones at the Department for Transport, telephone number 020 7944 4731 or email ben.jones@dft.gsi.gov.uk, can answer any queries regarding the instrument on passenger vehicles.

THE PUBLIC SERVICE VEHICLES (COMMUNITY LICENCES) REGULATIONS 2011

TRANSPOSITION NOTE

Purpose

1. The Public Service Vehicles (Community Licences) Regulations 2011 ("the Passenger Regulations") transpose, in relation to Great Britain, Regulation (EC) No. 1073/2009 of the European Parliament and of the Council of 21st October 2009 on common rules for access to the international market for coach and bus services ("Regulation 1073/2009"). The Department understands the intention is that separate provision will be made in Northern Ireland.

Transposition

2. The Passenger Regulations do what is necessary to implement Regulation 1073/2009, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

3. Requirements of Regulation 1073/2009 for which specific enforcement provision is not made are intended to be enforced administratively on the basis of the "good repute" provisions of Regulation 1071/2009 on access to the occupation of road transport operators and in domestic legislation (ie: the Public Passenger Vehicles Act 1981). Examples include the following:

- regular services to be carried out subject to an authorisation (Article 5(1));
- holders of authorisations to notify users of the withdrawal of a service one month in advance (Article 10(4));
- occasional services to be carried out under cover of a journey form (Article 12(1)); and
- requirements to keep and present documents (e.g: Articles 4(3), 17(1), 18(2) and 19(1)).

4. The table below provides details about how Regulation 1073/2009 has been implemented through the Passenger Regulations.

Article	**Objective**	**Implementation**	**Responsibility**
3, 4 and 5	Article 3 lays down the condition to be met by road transport operators if they are to be	Regulation 4 of the Passenger Regulations implements Article 4 by making it an	Traffic commissioners (for Community licences).

	permitted to provide passenger services. Articles 4 and 5 require that international carriage of passengers by coach and bus shall be carried out subject to possession of a Community licence (Article 4) and, in the case of regular services, an authorisation (Article 5). They also require Member States to issue a Community licence or an authorisation to operators who meet the conditions specified.	offence to use a passenger vehicle in contravention of Article 4. Regulation 5 of the Passenger Regulations implements Articles 4 and 5 by specifying who the competent authority is for both Community licences and authorisations. Regulation 6(1) of the Passenger Regulations implements Article 3 by specifying that to be entitled to Community licence an operator must hold a PSV operator's licence authorising international operations. Regulation 6(2) specifies that Community licences issued under Council Regulation 684/92 are to be treated as Community licences for the purposes of Regulation 1073/2009 and these Regulations. In relation to Community licences, this adds to Article 4(4), so as to ensure that holders of a Community licence issued before 4.12.11 are subject to all the rules in the Passenger Regulations. Regulation 6(3) does the same for authorisations issued under Council Regulation 684/92.	The Secretary of State (for authorisations).

4(3), 17(1), 18(2) and 19(1)	Articles 4(3), 17(1), 18(2) and 19(1) require Community licences, control documents, transport tickets for regular services, and authorisations respectively to be presented at the request of any authorised inspecting officer.	Regulation 11 of the Passenger Regulations implements these Articles by defining what is meant by "authorised inspecting officers" for the purposes of Regulation 1073/2009 and of the Passenger Regulations. Further, regulation 13 of the Passenger Regulations specifies the circumstances in which an authorised inspecting officer can stop a vehicle to check whether the operator has a Community licence. It also specifies who is a "stopping officer" for the purposes of Regulation 1073/2009 and of the Passenger Regulations.	Authorised inspecting officers are police constables in uniform, or examiners appointed under section 66A(1) of the Road Traffic Act 1988. Stopping officers are officers appointed under section 66B of the same Act.
4(5) and 7(3)	Articles 4(5) and 7(3) require the supply of information in relation applications for Community licences or authorisations to enable the competent authorities of Member States of establishment to check that the conditions for issuing these documents are satisfied.	Regulation 12 of the Passenger Regulations implements Articles 4(5) and 7(3) by providing for administrative penalties (refusal to issue and withdrawal) if the requirement to supply information is not met.	Traffic commissioners (for Community licences). The Secretary of State (for authorisations).
14 and 17(1)	Articles 14 and 17(1) require that cabotage operations shall be carried out subject to the possession of a Community licence and a control document.	Regulations 9 and 10 of the Passenger Regulations implement Articles 14 and 17(1) by making it an offence to use a vehicle for the purpose of UK cabotage operations in contravention of these Articles.	Traffic commissioners (for Community licences). The Secretary of State (for authorisations; would also issue control documents).

22(1) to 22(4)	Article 22(1) to 22(4) requires Member States to lay down appropriate penalties to sanction infringements of Community road transport legislation.	Regulation 7 of the Passenger Regulations implements Article 22(1) to 22(4) by providing for appropriate penalties (withdrawal of Community licences in certain circumstances).	Traffic commissioners (for Community licences). The Secretary of State (for authorisations).
22(5)	Article 22(5) requires Member States to provide a right of appeal against any administrative penalty imposed on them pursuant to Article 22.	Regulation 8 of the Passenger Regulations implements Article 22(5) by providing for appeal procedures following the refusal to issue or the withdrawal of a Community licence.	The Upper Tribunal (for Community licences).
27	Article 27 requires Member States to lay down rules on penalties applicable to infringements of the provisions of Regulation 1073/2009 and to take all the measures necessary to ensure that they are implemented.	Article 27 is implemented by the following provisions of the Passenger Regulations. Regulation 4 makes it an offence to use a Passenger Service Vehicle without a Community licence. Regulation 7 specifies the infringements which may lead to the competent authority withdrawing a Community licence. Regulations 9 and 10 make it an offence to use a vehicle for the purpose of UK cabotage operations in contravention of Articles 14 and 17(1).	Traffic commissioners (for Community licences). The Secretary of State (for authorisations).

		Regulation 12 provides for administrative penalties (refusal to issue and withdrawal) if the requirement to supply information is not met. Regulation 15 provides that offences under these Regulations may apply to a body corporate. Regulations 16 to 19 make consequential amendments to existing legislation.	