EXPLANATORY MEMORANDUM TO

THE TRAIN DRIVING LICENCES AND CERTIFICATES (AMENDMENT) REGULATIONS 2015

2015 No. 1798

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

The Regulations implement Commission Directive 2014/82/EU of 24th June amending Directive 2007/59/EC of the European Parliament and of the Council as regards general professional knowledge and medical and licence requirements[1]. Directive 2014/82/EU amends Annex II and Annex VI, and replaces Annex IV, to Directive 2007/59/EC of the European Parliament and of the Council on the certification of train drivers operating locomotives and trains on the railway system in the Community[2] ("the 2007 Directive") in light of operational experience by removing the option for existing drivers to be able to continue to drive if they lose their binocular vision, introducing a new standard for language tests where drivers have to communicate on safety critical issues and setting out more detailed requirements for general professional knowledge.

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

None.

4. Legislative Context

4.1 The Train Driving Licences and Certificates Regulations 2010 ("the 2010 Regulations") (S.I. 2010/724) implemented the 2007 Directive. The 2010 Regulations established a regime for the licensing and certification of train drivers who drive trains on the mainline railway network. The licence is recognised by other European Member States and indicates satisfaction of medical checks and possession of general professional competence. The certificate indicates the infrastructure on which the holder is authorised to drive and the rolling stock which the holder is authorised to drive.

4.2 The Regulations amend the 2010 Regulations and are necessary to transpose Directive 2014/82/EU into UK law. The Regulations also have transitional provisions that provide that drivers with existing licences shall be deemed to comply with these new medical requirements until the date of their next periodical medical test, as regards their licence, and with the new linguistic requirements until the date of their next periodic language test as regards certificates.

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[1] O.J. No. L184, 25.6.2014, p. 11.
[2] O.J. No. L315, 3.12 2007, p.51.

4.3 The Regulations amend the 2010 Regulations by:

(a) removing the option in Schedule 1, paragraph 1(2)(g) which allowed train drivers who had lost their binocular vision after starting work to continue to drive trains providing suitable adaptations could be made;
(b) replacing the general professional knowledge requirements set out in Schedule 3 with revised and more detailed requirements for the general professional knowledge a train driver is required to have in order to obtain a train driver licence; and
(c) introducing a new standard for language tests where drivers have to communicate on safety critical issues in Schedule 4, paragraph 8.

4.4 The Transposition Note sets out the approach taken to transpose the requirements of Directive 2014/82/EU.

4.5 The proposal that resulted in Directive 2007/59/EC was the subject of Explanatory Memorandum (EM) 7170/04, 7147/04, 7172/04, 7149/04, 7148/04, and 7150/04. The House of Commons European Scrutiny Committee considered the EM on 21 April 2004. The Committee recommended that the documents were of political interest and did not clear them (Report 17, Session 2003/2004, references 25436, 25437, 25438, 25439, 25455, 25456). Ministerial letters were sent to the Committee on 1 September 2004, 24 September 2004, 29 November 2004, 14 January 2005, 13 July 2005, 25 November 2005, 17 January 2007, 19 February 2007, and 11 July 2007. On 19 January 2005 the Committee recommended that the documents were politically important and should be debated (Report 4, Session 04/05). The debate took place on 9 March 2005. The House of Lords Select Committee on the European Union referred the EM to sub Committee B at the 1176th sift of 6 April 2004. On 21 April the Chairman wrote maintaining the scrutiny reserve. Ministerial letters were sent to the Committee on 1 September 2004, 24 September 2004, 8 November 2004, 29 November 2004, 14 January 2005, 13 July 2005, 25 November 2005, 17 January 2007, 19 February 2007, and 11 July 2007. The scrutiny reserve was lifted in a letter from the Chairman to the Minister of 7 December 2005.

4.6 Directive 2014/82/EU is a Commission Directive. Most proposals for Commission Directives are not subject to Parliamentary Scrutiny; the exception is if they have a particular policy or media interest.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

5.2 Responsibility for railways in Northern Ireland is devolved to the Northern Ireland Assembly and is administered by the Department for Regional Development (Northern Ireland) which will implement the requirements of the Directive.

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 The 2007 Directive forms part of the European Commission's strategy to improve the efficiency and competitiveness of Europe's railways. The key objectives of the 2007 Directive were to:

- create a more flexible labour market for train drivers (i.e. make it easier for train drivers to move from one Member State to another, and also make it easier for them to move from one railway undertaking to another);
- introduce common standards of driver and train crew competence across Europe;
- make it easier for cross-border rail services to operate; and
- increase public confidence in the rail system through the statutory licensing of train drivers.

7.2 Directive 2014/82/EU amends Annexes II, IV and VI of the 2007 Directive. The key objectives of the amendments are to:

- remove the option which allowed train drivers who had lost their binocular vision after starting work to continue to drive trains providing suitable adaptations could be made. The option was removed by the European Commission because it contradicted the requirement in Annex II of the 2007 Directive for distance visual acuity to be a minimum of 0.5 in each eye;
- provide revised and more detailed requirements for the general professional knowledge a driver must have to obtain a train driver licence; and
- introduce a new standard for language tests where drivers have to communicate on safety critical issues.

7.3 The Railway Safety and Standards Board is an industry body bringing together members (infrastructure managers, train operators, rolling stock leasers and suppliers) from across the mainline railway to help support the industry in improving safety, performance and value for money. They have produced a Railway Group Standard, GO/RT3451, which sets out train drivers' medical fitness requirements for the railway industry. Paragraph 2.1.6 requires that vision is effective in both eyes for existing drivers and that near binocular vision meets a set standard. This ensures that train drivers are able to safely operate on the mainline railway. The removal of the option on vision therefore does not affect existing UK train drivers or current standards set by the industry.

7.4 The general professional knowledge requirements are now clearer but do not require the UK train companies to change their training courses or their examinations for train drivers since these are already covered under the industry's competence management systems.

7.5 The new standard for language tests has a minimal effect as it applies to train drivers who work almost exclusively in the UK and therefore such language requirements relate to proficiency in English. The existing psychometric and general professional knowledge tests are sufficiently robust to establish if train drivers are at Level B1 standard for the English language. The drivers of one train operating company operating through the Channel Tunnel will need a second language to operate in countries other than the UK. The new standard will therefore require drivers for this train operating company, to have additional written language training to ensure they have sufficient language standards for that purpose.

7.6 The transitional provisions will mean that existing train drivers who hold a train driving licence as at 1st January 2016 will not need to comply with the new medical requirements until their next periodic medical and psychological examination that takes place on or after 1st January 2016 or comply with the language requirements until their next periodic language test that takes place on or after 1st January 2016.

- Consolidation

7.7 The amendments made by this instrument to the 2010 Regulations are primarily minor and technical changes to the Schedules. The Department for Transport has no current plans to consolidate the Regulations.

8. Consultation outcome

8.1 A three week informal consultation on a draft of the Regulations was carried out by the Office of Rail and Road ("ORR") in its role as the appropriate enforcement authority from 18th February 2015 to 10th March 2015. In view of the limited and generally technical nature of the proposals, it was considered appropriate and proportionate to have a shortened consultation period targeted at relevant stakeholders which included train operating companies, freight operating companies, track maintenance contractors, trade unions and the Railway Safety and Standards Board.

8.2 A total of seven responses were received: six from train operating companies and one from a freight operating company. The trade unions raised no objections to the changes and, overall, stakeholders confirmed that the changes brought about by the draft amending regulations would have no impact. Two stakeholders sought clarification that the language test requirement and standard was only aimed at drivers who need to use language as a second language as part of their train driving in addition to their native language. As the psychometric tests, which have been part of the train driver recruitment process since 1988, test both written and oral skills as part of the process they should be sufficient to establish if the candidate train driver meets the Level B1 standard in English

as required by the Regulations with no additional testing required. None of the other stakeholders either raised or had any specific issues with the draft Regulations.

9. Guidance

Revised guidance on the Regulations has been produced by ORR in consultation with industry stakeholders. This will be published on ORR's web site before the Regulations comes fully into force on 1st January 2016, and will assist those affected to understand the changes to the legislation and their responsibilities.

10. Impact

10.1 The costs of the Regulations are estimated at approximately £253,000 and will fall to train operating companies. The only costs identified relate to additional language training for the 72 UK based train drivers who operate cross-border services. No impact on the costs of the public sector, third sector organisations, regulators or consumers has been identified. This measure qualifies as "low-cost" as its gross cost to business in any year will be significantly under £1 million. A full impact assessment has therefore not been produced.

10.2 ORR will meet the costs of these changes in its role as the independent regulator where they relate to administration and inspection of the licensing regime which is already in place.

10.3 A full Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The 2010 Regulations already contains a provision requiring the Secretary of State to undertake a five yearly review of its provisions which was inserted by the Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013. The next review is required to be completed by 21st May 2018. The Secretary of State is required to publish a report setting out the conclusions of the review.

13. Contact

Chris Angell at the Department for Transport (Tel: 020 7944 0082 or e-mail: Christopher.angell@dft.gsi.gov.uk) can answer any queries regarding this instrument.