STATUTORY INSTRUMENTS

2010 No. 865

ROAD TRAFFIC

The Vehicle Drivers (Certificates of Professional Competence) (Amendment) Regulations 2010

Made - - - -	*17th March 2010*
Laid before Parliament	*23rd March 2010*
Coming into force - -	*21st April 2010*

The Secretary of State for Transport makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972**(a)** and section 56(1) and (2) of the Finance Act 1973**(b)**.

The Secretary of State for Transport is a Minister designated(**c**) for the purposes of section 2(2) of the European Communities Act 1972 in relation to the regulation and supervision of the qualifications and working conditions of persons engaged in road transport.

The Treasury has consented under section 56(1) of the Finance Act 1973 in respect of regulations 3(a)(i), in part, (iii), in part, and (iv), in part, and 4(c), (d), in part, and (e).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Vehicle Drivers (Certificates of Professional Competence) (Amendment) Regulations 2010 and shall come into force on 21st April 2010.

(2) In these Regulations, the "principal Regulations" means the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007(**d**).

Amendment of the principal Regulations

2. The principal Regulations shall be amended in accordance with the following regulations.

3. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) after the definition of "armed forces" insert—

""bank holiday" means a day to be observed as such under section 1 of, and Schedule 1 to, the Banking and Financial Dealings Act 1971**(e)**;

(**a**) 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a).
(**b**) 1973 c.51.
(**c**) S.I. 1975/1707.
(**d**) S.I. 2007/605; relevant amending instrument is S.I. 2008/1965.
(**e**) 1971 c.80; Schedule 1 was amended by the St. Andrew's Day Bank Holiday (Scotland) Act 2007 (asp 2) section 1.

"candidate" means a person submitting, or seeking to submit, to an initial CPC test;";

(ii) in the definition of "test pass certificate", at the end, add "and in relation to Northern Ireland, means the certificate referred to in regulation 37(1) of the Motor Vehicles (Driving Licences) Regulations (Northern Ireland) 1996**(a)**";

(iii) after the definition of "third country" insert—

""trainer" means a person who provides training or instruction in relation to the initial CPC test;";

(iv) after the definition of "work permit" insert—

""working day" means—

(a) in relation to Great Britain, save for the purposes of regulation 5(5B), (6ZA)(c), (6ZAD) and (6ZAE), a day other than a Saturday, Sunday, bank holiday, Christmas Day or Good Friday;

(b) in relation to Northern Ireland, a day other than a Saturday, Sunday, bank holiday, Christmas Day or Easter Tuesday."; and

(b) in paragraph (2), at the beginning of sub-paragraph (b), insert "save for the purposes of regulation 5A(2A),".

4. In regulation 5 (initial CPC test)—

(a) in paragraph (5A) for "taking" substitute "applying to take";

(b) after paragraph (5A) insert—

"(5B) Where a person has failed to pass the theoretical test or the practical test (both as referred to in the table at the end of this regulation), no application may be made by, or in respect of, that person for a test of the same part to be conducted on a day which falls before the expiry of a period of three clear working days commencing with the day after that on which that part of the test was failed.";

(c) for paragraph (6) substitute—

"(6) Subject to paragraph (6ZA), where an initial CPC test is organised by a competent authority, the candidate shall pay to the competent authority the fee specified in the table at the end of this regulation for the part of the test for which an application for an appointment is made.";

(d) after paragraph (6) (as substituted by these Regulations) insert—

"(6ZA) A trainer may, in respect of a candidate who has received, or will receive, from that trainer, training or instruction in Great Britain in relation to the initial CPC test, apply for an appointment in Great Britain for any part of a test referred to in the table at the end of this regulation if the trainer—

(a) pays to the Secretary of State the fee specified in the table for that part of the test;

(b) provides such details relating to the trainer's business in Great Britain, the appointment sought or the vehicle on which the test is to be taken as the Secretary of State may reasonably require; and

(c) undertakes to provide the relevant details relating to the candidate no later than 1600 hours on the day before the last clear working day before the day for which the appointment is made.

(6ZAB) An application under paragraph (6ZA) may be refused where the appointment specified in that application is unavailable or where, in the opinion of the Secretary of State, it is reasonably necessary to do so in the general interests of candidates in Great Britain.

(6ZAC) Where an appointment ("the booked appointment") for part of a test has been made by or on behalf of a candidate in respect of a particular category of relevant vehicle,

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(**a**) SR 1996/542.

no application for a further appointment shall be made for that candidate in relation to that part of the test in respect of that category of relevant vehicle unless—

(a) the booked appointment has been cancelled;

(b) the part of the test due to take place on the day of the booked appointment does not otherwise take place; or

(c) subject to paragraph (5B), the candidate fails to pass the test.

(6ZAD) A fee paid pursuant to paragraph (6) may be repaid if notice to cancel the appointment for the part of the test is given to the competent authority not less than three clear working days before the date of the appointment for that part of the test.

(6ZAE) A fee paid pursuant to paragraph (6ZA) may be repaid if notice to cancel the appointment for the part of the test is given to the Secretary of State not less than three clear working days before the date of the appointment for that part of the test.";

(e) in paragraph (6A), for "it conducts" substitute "that person is to conduct";

(f) after paragraph (6A) insert—

"(6ZB) A fee paid pursuant to paragraph (6A) in respect of the practical test may be repaid if the person approved under paragraph (1) gives notice to the competent authority that the appointment for the conduct of that part of the test has been cancelled and the notice was given to the competent authority at any time before the time of the appointment.";

(g) for paragraph (9) substitute—

"(9) In paragraphs (5B), (6ZA)(c), (6ZAD) and (6ZAE), "working day" means, in Great Britain, a day other than a Sunday, bank holiday, Christmas Day or Good Friday.".

(h) after paragraph (9) (as substituted by these Regulations) add—

"(10) In paragraph (6ZA) "relevant details", in relation to a candidate, means the name and such further details relating to—

(a) that candidate,

(b) the licence that candidate holds,

(c) the nature of the test, and

(d) the vehicle on which the test is to be taken,

as the Secretary of State may reasonably request upon the making of the appointment for the test.".

5. In regulation 5A (further requirements at tests: initial CPC test) after paragraph (2) insert—

"(2A) For the purposes of the conduct of the practical test referred to in the table in regulation 5 the candidate shall provide a relevant vehicle which falls within a category or sub-category shown in column (1) of the table in regulation 37 of the Driving Licences Regulations and which—

(a) has a power, mass, size or other specification equivalent to or greater than that shown in column (2) of the table in that regulation 37 in respect of the category or sub-category within which the vehicle falls;

(b) is reasonably representative of the category or sub-category to which it belongs and is otherwise suitable for the purposes of the test;

(c) complies with each requirement specified in column (1) of the following table where the vehicle is one which falls within the category or sub-category specified in relation to that requirement in column (2) of the table.

Table

(1) Requirement	*(2) Category or sub-category of vehicle*
The vehicle shall not be carrying goods or burden other than fixed items which are characteristic of the category or sub-category to which it belongs.	C1, C1+E, C, C+E, D1, D1+E, D, D+E
The vehicle shall be fitted with linkage and braking mechanisms which are designed for use when the trailer is fully laden	C1+E, C+E, D1+E, D+E
The vehicle shall be fitted with an anti-lock braking system and a tachograph	C1, C1+E, C, C+E, D1, D1+E, D, D+E
The vehicle shall have eight or more forward ratios.	C, C+E"

6. After regulation 5A insert—

"**Examiner's right to refuse to conduct test**

5B.—(1) The examiner must refuse to conduct—

(a) the practical test where—

(i) the vehicle submitted for that purpose does not fall within the category in respect of which the theoretical test referred to in regulation 5(5A) was passed; or

(ii) the candidate fails to comply with regulation 5A(2A);

(b) the theoretical test or the practical test where the candidate—

(i) fails to comply with regulation 5A(1); or

(ii) appears to the examiner to be someone other than the person whose details were provided pursuant to an undertaking under regulation 5(6ZA)(c).

(2) The examiner may refuse to conduct the theoretical test or the practical test where a trainer has failed to comply with an undertaking given under regulation 5(6ZA)(c).

(3) Any fee paid pursuant to regulation 5(6) or (6ZA)(a) may be repaid where—

(a) the examiner refused to conduct the test under paragraph (1)(b)(i) because the candidate did not satisfy the examiner as to the candidate's identity in accordance with regulation 5A(3) and the candidate subsequently satisfies the competent authority as to the candidate's identity;

(b) the examiner refused to conduct the test under paragraph (1)(b)(ii) and the candidate subsequently appears to the examiner to be the person whose details were provided pursuant to an undertaking under regulation 5(6ZA)(c).

(4) In this regulation—

"examiner" means the person approved under regulation 5(1), the person conducting the test on behalf of the person so approved or the person conducting the test on behalf of the competent authority;

"practical test" means the test of that name referred to in the table in regulation 5; and

"theoretical test" means the test of that name referred to in the table in regulation 5.".

Signed by authority of the Secretary of State

Paul Clark
Parliamentary Under Secretary of State,
Department for Transport

15th March 2010

We approve the making of these Regulations *Tony Cunningham*
Dave Watts
17th March 2010 Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007.

Those 2007 Regulations implemented Directive 2003/59/EC of the European Parliament and of the Council of 15th July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC (OJ No. L226, 10.9.2003, p.4), as amended by Directive 2004/66/EC (OJ No. L168 1.5.2004, p.35) and Directive 2006/103/EC (OJ No. L363, 20.12.2006, p.344). These Regulations make further provision in relation to matters arising out of, or related to, the obligations in that Directive.

The Regulations—

(a) permit those providing training for the initial test of professional competence for the drivers of buses or lorries (comprising a theoretical test and a practical test) to apply for a test appointment for those they are training, provide for the refusal of applications and make amendments in consequence (*regulations 3(a)(i) (in part), (iii) (in part) and (iv) (in part), 4(c), (d) (in part), (e), (g) (in part) and (h)*);

(b) in relation to—

(i) the practical test, require a test examiner to refuse to conduct the test if the vehicle provided is not of the same sort as that in respect of which the theoretical test was undertaken or if the vehicle does not meet the specified minimum requirements for use in the conduct of the test;

(ii) the theoretical test or the practical test, allow the examiner to refuse to conduct the test where the person providing training for the test makes an appointment for part of the test to be undertaken but fails to provide details regarding the test candidate within the specified period before the date of the appointment and requires the examiner to refuse to conduct the test where the candidate fails to produce an appropriate driving licence or where the examiner is not satisfied as to the candidate's identity;

(iii) fees paid in respect of the theoretical test or the practical test, provide for the circumstances in which they may be repaid where the examiner refuses to conduct the test (*regulations 3(a)(i) (in part) and (iii) (in part) and 6*);

(c) provide for the circumstances in which fees paid in respect of the theoretical test or the practical test, or the fees paid by other persons approved to conduct tests, may be repaid and make amendments in consequence and certain other minor amendments (*regulations 3(a)(i) (in part) and (iv) (in part) and 4(d) (in part), (f) and (g) (in part)*);

(d) require, for the purposes of the initial practical test of professional competence, the bus or lorry driver to provide a vehicle which meets specified requirements for use in the conduct of a test (*regulations 3(a)(i) (in part) and (b) and 5*);

(e) prevent the making of a further test appointment where an appointment of the same type has already been made unless that appointment has been cancelled, the test does not otherwise take place or the test has been failed (*regulations 3(a)(i) (in part) and 4(d) in part)*);

(f) correct an omission in relation to test pass certificates issued in Northern Ireland (regulation 3(a)(ii));

(g) provide that where the theoretical test or the practical test is failed, the test cannot be retaken unless at least three clear working days have elapsed since the day the test was failed (*regulations 3(a)(iv) (in part) and 4(b)*); and

(h) require a bus or lorry driver to have passed the theoretical test before applying to take the practical test (*regulation 4(a)*).

Copies of the Directives referred to above may be obtained from the Stationery Office.

Full impact assessments of the effect that this instrument will have on the costs of business and the voluntary sector are available from the Driving Standards Agency, The Axis Building, 112 Upper Parliament Street, Nottingham, NG1 6LP.

The assessments are annexed to the Explanatory Memorandum which is available alongside this instrument on the OPSI website, www.opsi.gov.uk and copies of the assessments have been placed in the library of each House of Parliament.

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