EXPLANATORY MEMORANDUM TO

THE VEHICLE DRIVERS (CERTIFICATES OF PROFESSIONAL COMPETENCE) (AMENDMENT) REGULATIONS 2015

2015 No. 2024

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport (DfT) and is laid before the House of Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007 (the "Driver CPC Regulations") in order to:-

(a) update the definition of "relevant vehicle" to provide that where it refers to vehicle licensing categories C, C+E, D and D+E (lorries, buses and coaches) it no longer means those categories as defined in the second EU Driving Licences Directive, which has been repealed, and instead means those categories as defined in the Driving Licences Regulations (which have been amended to transpose the third EU Driving Licences Directive);

(b) add prison service to the list of bodies whose use of a vehicle is exempt from the application of the Driver CPC Regulations;

(c) adjust the "empty vehicles" exemption in the Driver CPC Regulations by increasing the permitted radius of 50 kilometres from a driver's base to 100 kilometres from that base; and

(d) align the requirements relating to gears in lorries used in driver CPC tests with those for lorries used in vocational driving tests.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 This instrument is made in connection with the qualifications required to be held by drivers of lorries, buses or coaches in the EU. With some exceptions, drivers must obtain a "Certificate of Professional Competence", valid for 5 years, and thereafter undergo 35 hours of periodic training every 5 years.

4.2 This qualifications regime is required by European Directive 2003/59/EC ("the Driver CPC Directive") with the objective of improving road safety, the professionalism and

quality of service offered by professional drivers and to facilitate the free movement of workers.

4.3 The Driver CPC Directive was transposed for the UK by the Driver CPC Regulations (S.I. 2007/605) which came into force in 2009. (The Explanatory Memorandum published with the Driver CPC regulations contains a transposition note showing how the Directive was transposed in the Driver CPC Regulations and a scrutiny history outlining the consideration of the Directive by the relevant Parliamentary scrutiny committees).

4.4 This instrument makes some amendments to the Driver CPC Regulations.

4.5 The Driver CPC Regulations, in defining the driving licence vehicle categories to which they apply, adopted and cross referred to the categories specified in the second EU Driving Licences Directive (Council Directive 91/439/EEC).

4.6 The second EU Driving Licences Directive has been repealed and replaced by the third EU Driving Licences Directive (Directive 2006/126/EC of the European Parliament and of the Council on driving licences (Recast)). The third Driving Licences Directive has, for the most part, been transposed into the principal driving licences regulations for Great Britain and Northern Ireland (i.e. the Motor Vehicles (Driving Licences) Regulations 1999, S.I. 1999/2864, and the Motor Vehicles (Driving Licences) Regulations (Northern Ireland) 1996, S.R (NI) 1996/542 - together referred to below as the "Driving Licences Regulations"). Driving licence vehicle categories are now set out in the Driving Licences Regulations.

5. Extent and Territorial Application

5.1 This instrument extends to the United Kingdom.

5.2 This instrument applies throughout the United Kingdom.

6. European Convention on Human Rights

6.1 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 Driver CPC Regulations require professional lorry, bus and coach drivers to hold a professional qualification (Driver CPC), in addition to their vocational driving licence, in order to drive professionally within the EU. The Driver CPC is obtained by undergoing an initial qualification and maintained by undergoing periodic re-training every 5 years. The Driver CPC Regulations also provide for a number of exemptions from the requirement to obtain driver Certificates of Professional Competence.

(a) Updating the definition of "relevant vehicle"

7.2 The Driver CPC Regulations apply to any person who drives a "relevant vehicle" on a road who is an EU national, or employed by an undertaking established in the EU.

7.3 The definition of "relevant vehicle" has been amended to provide that where it refers to categories C, C+E, D and D+E (lorries, buses and coaches) it no longer means those categories as defined in the second EU Driving Licences Directive, which has

been repealed, and instead means those categories as defined in the Driving Licences Regulations.

(b) Exempting vehicles used by the prison service from the Driver CPC Regulations

7.4 This instrument adds prison service to the list of bodies in regulation 3(2)(b) of the Driver CPC Regulations whose use of a relevant vehicle is exempt from the application of the Driver CPC Regulations.

7.5 The Driver CPC Directive exemptions include "drivers of vehicles used by, or under the control of, forces responsible for maintaining public order" (Article 2(b)). In transposing this, the Driver CPC Regulations exempted the police. The exemption should also have included the prison service. This instrument will provide for this. Other analogous exemptions include the fire services, ambulance services and civil defence.

7.6 CPC training for typical coach or bus operations, or commercial road haulage, is not well aligned for the prison service. The cellular vehicles used by the prison service do not use tachographs, are exempt from speed limiters and often move with a blue light police escort. The prison service needs to be able to respond to operationally urgent or emergency situations by deploying staff flexibly where necessary. As relevant drivers take bespoke training it would be disproportionate to also require them to have Driver CPC.

7.7 The drivers who will be exempt from the Driver CPC requirements by this instrument will be those driving vehicles being used by, or under the control of, the prison service.

7.8 In practice that means staff employed in prisons (including young offender institutions), be they run by the public sector or contracted out, who from time to time are required to drive large passenger carrying vehicles (driving licence category D – i.e. vehicles with over 8 passenger seats), or medium and large goods vehicles (driving licence category C – i.e. over 3,500kg). But the exemption would also cover the occasional drivers hired in by the prison service.

7.9 The driving is usually done by staff in operational support grades (OSG) and less commonly by prison officers. OSG staff are hardly ever deployed exclusively on driving duties. They usually undertake a variety of duties, including support on prison wings, stores, internal escort and vehicle navigation (in conjunction with the vehicle's driver).

7.10 The exemption would also cover drivers hired by the prison service to drive vehicles for them. Hired drivers are used in the prison service in some cases for goods transport and would normally be engaged from a suitable driver agency if and when the need arises. However they are rarely used for prisoner transport. They would usually already have Driver CPC, because it is required for a wide range of other driving duties outside the prison service for which agency drivers would need it.

7.11 Vehicles used by or under the control of the prison service are those which are kept and operated by the prison service, but it would include vehicles hired by the service for their use. Hired vehicles would usually be goods vehicles, but it is also possible that passenger carrying vehicles could be hired.

7.12 The type of transportation this currently applies to is indicated below:-

- Transportation of all category A prisoners (high security prisoners). They are held in category A prisons which are all public sector prisons so the prison staff providing transportation will be public sector staff. The transportation is usually for journeys between prisons, or between prison and court, and is done in larger cellular vehicles, often with blue lights and having a police escort.
- Some transportation of category B, and other lower security, prisoners, particularly in operationally urgent or emergency situations. Most of these prisoners will be in public sector prisons, but there are number of private sector run prisons. So the prison staff transporting such prisoners could be in the public or private sector. This is often in smaller vehicles to which CPC does not apply, but larger cellular vehicles may be used.
- Transportation of goods. Some prison staff also occasionally drive goods vehicles (in vehicle category C1, medium sized, and C, large sized) to transport goods or materials for prison service purposes.

7.13 Prison service drivers for category A prisoner transport must have a driving licence for the relevant vehicle class and undertake a five day standard driver course, delivered in-house by the local driving assessor. The assessors are trained using a recognised training package developed and approved by the Prison Service College (at Newbold Revel, Warwickshire).

7.14 A substantial proportion of category A drivers are also trained in a high risk driver navigator course to allow them to drive under police escort using blue lights. This is delivered by an appointed UK police constabulary, currently South Wales Police.

7.15 It is standard practice for all drivers engaged on the driving of higher security, category A, prisoners to undertake 12 monthly refresher training. This is provided by the driving assessors.

7.16 OSG staff are trained in a variety of other prison-related areas, because they are not employed just to be drivers. Some of this training, such as related to security and restraint, is relevant to the wider tasks of prisoner transportation.

7.17 Prison service staff who drive large vehicles (other than for category A prisoner transport) will hold a driving licence for the relevant vehicle class. They are also subject to a driving assessment undertaken by the local driving assessor, unless they can otherwise demonstrate appropriate competence.

7.18 However, in England and Wales, prison staff driven transportation to which this instrument relates represents only a small proportion of the overall extent of prisoner transportation.

7.19 This is because in England and Wales most prisoner transportation is provided by the "Prisoner Escort and Custody Services" (referred to as PECS – provided under section 80 of the Criminal Justice Act 1991) which are currently contracted out to two service providers. They provide transportation, and related custody services principally during transit and when prisoners are temporarily outside of prisons (e.g. at court). They do not provide transportation for category A prisoners. But they provide the bulk of the transportation services (non blue light) for prisoner categories B to D (i.e. categories B - sub-maximum security, C - lesser risk, which accounts for the bulk of the prison population, and D - open prison prisoners) including prison transfers and routine movements of prisoners between police cells and courts or prisons. PECS drivers are

not within scope of this instrument and are not exempt from Driver CPC. There are also PECS arrangements in Scotland.

7.20 It is not thought appropriate to include PECS drivers in the exemption because:-

- prisoner transportation is the core PECS function and so their drivers carry out more driving duties than prison service staff;
- the nature of driving carried out by PECS drivers is typically routine prisoner transportation; and
- they don't have to transport category A prisoners and do not receive the additional training for that.

(c) Exempting empty vehicles driven within 100 kilometres of the driver's base

7.21 This instrument adjusts the "empty vehicles" exemption in regulation 3(3) of the Driver CPC Regulations by increasing the permitted radius of 50 kilometres from a driver's base to 100 kilometres from that base.

7.22 The empty vehicles exemption applies to lorries, buses or coaches, which are not carrying passengers or goods, being driven by a person whose principal activity at work is not driving "relevant vehicles" and who does not drive the vehicle beyond a 50 kilometre radius of the driver's base. This instrument increases that permitted radius to 100 kilometres.

7.23 The "empty vehicle" exemption was first introduced in 2013 by amendment to the Driver CPC Regulations. The exemption was intended to apply to people who drive empty vehicles from time to time, such as valets and mechanics.

7.24 The 50km distance criterion was originally selected to be consistent with the 50km distance limit in the drivers' hours rules (in what was Article 13(1) (d) of European Regulation 561/2006) for vehicles carrying materials, equipment or machinery for the driver's use in the course of their work. Article 3(aa) of EU Regulation 561/2006 was inserted by EU Regulation 165/2014, and increased this 50km radius to 100km. This instrument therefore amends the Driver CPC Regulations to increase the distance limit to be consistent with that in the amended EU Regulation 561/2006.

(d) Aligning the requirements relating to gears in lorries used in Driver CPC tests with those for lorries used in vocational driving tests

7.25 The Driver CPC Directive requires (in Annex 1, Section 2, paragraph 2.2) that any vehicles used for Driver CPC practical tests must meet at least the same minimum requirements for test vehicles as are required for vehicles used for vocational driving tests under the EU Driving Licences Directives. These minimum requirements are set out in Annex II to the third Driving Licences Directive. They were transposed in regulation 37 of the Motor Vehicles (Driving Licences) Regulations 1999 (S.I. 1999/2864), and so regulation 5A ("further requirements at tests: initial CPC test") of the Driver CPC Regulations therefore cross refers to regulation 37.

7.26 EU Directive 2012/36/EU made amendments to the minimum requirements for test vehicles set out in Annex II to the third Driving Licences Directive. In particular it removed the need for large test vehicles (lorries in categories C and C+E) to have 8 forward gear ratios. This was a welcome change in the UK as it provides flexibility for drivers to be able to use a wider range of vehicles for the driving test.

7.27 This amendment was transposed by regulation 5(d) of the Motor Vehicles (Driving Licences) (Amendment) Regulations 2014 (S.I. 2014/613), which amended regulation 37 of the Motor Vehicles (Driving Licences) Regulations 1999.

7.28 However at that time a corresponding amendment was not made to the requirements (set out in the table at the end of sub-paragraph (2A) of regulation 5A of the Driver CPC Regulations) for large goods test vehicles used for Driver CPC tests. This instrument corrects this so that the minimum test vehicle standards applied to vehicles used for Driver CPC tests are the same as those used for vocational driving tests.

Consolidation

7.29 None.

8. Consultation outcome

8.1 It was concluded that there would be no purpose in conducting a consultation for the reasons indicated below.

8.2 Updating the definition of "relevant vehicle" to change the reference in it from the second Driving Licences Directive to the measures transposing the third Driving Licences Directive is appropriate given the second Driving Licences Directive has been repealed.

8.3 Prison services should have been included, along with the police, in the list of agencies whose use of a vehicle is exempt from the application of the Driver CPC Regulations when they were originally made and this instrument provides for this.

8.4 Adjusting the "empty vehicles" exemption in the Driver CPC Regulations, by increasing the permitted radius of 50 kilometres from a driver's base to 100 kilometres from that base, reflects the existing policy to link that radius to the radius adopted for the drivers' hours rules. The effect of the change is, in this respect, to relax the stringency of the Driver CPC Regulations.

8.5 Aligning the requirements relating to gears in lorries used in Driver CPC tests with those for lorries used in vocational driving tests reflects the obligation to link these two technical requirements. The effect of the change is to give greater flexibility in the test vehicle that can be used.

9. Guidance

9.1 Guidance on the operation of the Driver CPC Directive is already available on the internet in the GOV.UK site. This guidance has been updated to reflect these changes.

10. Impact

10.1 The impact on business, charities or voluntary bodies is not significant. The regulations impose no extra costs on business, charities or voluntary bodies. They will save any costs relating to Driver CPC where the new exemptions apply. The fees for obtaining an initial Driver CPC range from £230 to £264 per driver. Once obtained a driver must then complete 35 hours of driver training every 5 years. Training to prepare for the tests, and also subsequent mandatory driver training, is available from private sector providers and their charges vary. The prison service, both public and contracted out, will not have to incur these costs. The increase in the distance exemption for empty vehicles will also avoid these costs, such as for businesses which operate self-drive vehicle hire and rental operations where minibuses and other large

vehicles are delivered to customers. The change would allow some of these businesses, particularly in remote areas, to readjust their current practices and drivers to deliver over some longer distances between 50km and 100km without requiring Driver CPC.

10.2 There is no significant impact on the public sector.

10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 This legislation applies to activities that are undertaken by small businesses. However because the effect is de-regulatory there is no need to minimise its impact on small businesses.

12. Monitoring & review

12.1 The Driver CPC Regulations are subject to a regulatory review in 2016 and the amendments made in this instrument will be therefore reviewed at the same time, and may be amended accordingly.

13. Contact

13.1 Mandy Lynch, Driver and Vehicle Standards Agency. Tel: 0115 936 6097 or email: mandy.lynch@dsa.gsi.gov.uk who can answer any queries regarding this instrument.