

1981 No. 2

EUROPEAN COMMUNITIES
TRANSPORT

The Road Transport (Qualifications of Operators) (Amendment) Regulations (Northern Ireland) 1981

Made 5th January 1981

Coming into operation 30th January 1981

The Department of the Environment, being a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the regulation and supervision of qualifications of persons engaged in road transport, in exercise of the powers conferred by that section, hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Road Transport (Qualifications of Operators) (Amendment) Regulations (Northern Ireland) 1981 and shall come into operation on 30th January 1981.

Interpretation

2. In these Regulations “the Act of 1967” means the Transport Act (Northern Ireland) 1967(c).

Amendment of Act of 1967

3.—(1) The Act of 1967 shall have effect subject to the following provisions of this Regulation.

(2) In sections 6A(2), (3), (5), 7(1A)(b)(iii), 10(3B), (3C), 15A(1)(b)(iii), 28A(2), (3), (5), 29(2C), (2D) and 46A(7) for the word “responsible” there shall be substituted the words “continuously and effectively responsible”.

(3) In section 8 after subsection (2) there shall be inserted the following subsection—

“(2A) If on the date of the expiration of a road service licence the licence is, by virtue of regulations made under section 33, held by a person other than the person to whom the licence was granted, the licence shall continue in force until the application by that other person for a new road service licence is disposed of in accordance with those regulations.”.

(4) At the end of subsection (3A) of section 10 and subsection (2B) of section 29 there shall be added the words “as from such time as the Department may determine”.

(5) In section 16 after subsection (1) there shall be inserted the following subsections—

“(1A) If on the date of the expiration of an operator’s licence an application is before the Department for the grant of a new operator’s licence in substitution for an existing operator’s licence held by the applicant, the existing operator’s licence shall continue in force until the application is disposed of.

(a) S.I. 1975/1707

(b) 1972 c. 68

(c) 1967 c. 37 (N.I.)

(1B) If on the date of the expiration of an operator's licence the licence is, by virtue of regulations made under section 33, held by a person other than the person to whom the licence was granted, the licence shall continue in force until the application by that other person for a new operator's licence is disposed of in accordance with those regulations."

(6) In section 33(2) after paragraph (d) there shall be added the following paragraph—

"or

(e) in the case of a road service licence or operator's licence, the licence has been revoked under section 10(3A) or 29(2B), as the case may be, as from some future date."

(7) In section 46A for subsection (2) there shall be substituted the following subsection—

"(2) "Conviction" means a conviction by or before a court in a member State, not being a spent conviction within the meaning of the Rehabilitation of Offenders (Northern Ireland) Order 1978(a), and a reference to a person being convicted of an offence shall be construed accordingly."

(8) In section 46A(3) for the words "convictions relating to him" there shall be substituted the words "convictions (within the meaning of subsection (2)) relating to the person or any partner, employee or agent of the person or, in the case of a company, any officer of the company".

(9) In section 46A(5)—

(a) at the beginning there shall be inserted the words—

"In relation to an applicant for, or a holder of, a road service licence "exempt person" means a person who held, or was one of the holders of, a relevant licence before 1st January 1978 and, subject to subsection (5A),";

(b) in paragraphs (a), (b) and (e) for the words "road service licence" wherever they occur there shall be substituted the words "relevant licence";

(c) in paragraph (b) for the words "had responsibility" there shall be substituted the words "was continuously and effectively responsible";

(d) for paragraph (c) there shall be substituted the following paragraph—

"(c) if he is the holder of a certificate issued—

(i) by a body approved for the purposes of this section by the Department, or for the purposes of paragraph 6 of Schedule 3 to the Transport Act 1980(b) by the Minister of Transport, or

(ii) by a body or authority designated by any member State other than the United Kingdom in pursuance of Article 2(4) of the Council Directive (EEC) 74/562 of 12th November 1974(c) on admission to the occupation of road passenger transport operator in national and international transport operations.

to the effect that he possesses skills in the subjects listed in Part A of the Annex to that Directive and, in the case of a licence to which the condition referred to in section 7(1A)(a) is not attached, also to the effect that he possesses skills in the subjects listed in Part B of the Annex to that Directive (the subjects all being subjects recognised by that body or authority as required by the said Article 2(4))";

(e) in paragraph (e) for the words from the beginning to "or by that date" there shall be substituted the words "if before 1st January 1980 he" and for the

(a) S.I. 1978/1908 (N.I. 27)

(b) 1980 c. 34

(c) O.J. No. L308/23 of 19.11.74

words "had responsibility" there shall be substituted the words "been continuously and effectively responsible";

(f) at the end of the subsection there shall be added the words—

"In this subsection and subsection (5A) "relevant licence" means—

(i) a road service licence, or

(ii) a licence or other authorisation granted in a member State which authorises the holder to provide a service for the carriage of passengers by road for reward."

(10) In section 46A after subsection (5) there shall be inserted the following subsection—

"(5A) A person shall not be regarded—

(a) for the purposes of subsection (5)(a) as the holder, or one of the holders of, a relevant licence, other than a road service licence, at any time;

(b) for the purposes of subsection (5)(b) as being employed in a position where he was continuously and effectively responsible for the operation of motor vehicles used under a relevant licence, other than a road service licence, at any time;

unless he is the holder of a certificate issued by the Minister of Transport or the competent authority of any member State other than the United Kingdom to the effect that he held such a licence or was so employed at that time."

(11) In section 46A(6)—

(a) at the beginning there shall be inserted the words—

"In relation to an applicant for, or a holder of, a road freight operator's licence "exempt person" means a person who held, or was one of the holders of, a relevant licence before 1st January 1978 and, subject to subsection (6A),";

(b) in paragraphs (a), (b) and (e) for the words "road freight operator's licence" wherever they occur there shall be substituted the words "relevant licence";

(c) in paragraph (b) for the words "had responsibility" there shall be substituted the words "was continuously and effectively responsible";

(d) for paragraph (c) there shall be substituted the following paragraph—

"(c) if he is the holder of a certificate issued—

(i) by a body approved for the purposes of this section by the Department, or for this section by the Department, or for the purposes of Regulation 9 of the Goods Vehicle Operators (Qualifications) Regulations 1977(a) by the Minister of Transport, or

(ii) by a body or authority designated by any member State other than the United Kingdom in pursuance of Article 3(4) of the Council Directive (EEC) 74/561 of 12th November 1974(b) on admission to the occupation of road haulage operator in national and international transport operations,

to the effect that he possesses skills in the subjects listed in Part A of the Annex to that Directive and, in the case of a licence to which the condition referred to in section 15A(1)(a) is not attached, also to the effect that he possesses skills in the subjects listed in Part B of the Annex to that Directive (the subjects all being subjects recognised by that body or authority as required by the said Article 3(4));";

(a) S.I. 1977/1462 as amended by S.I. 1980/1787

(b) O.J. No. L308/18 of 19.11.74.

(e) in paragraph (e) for the words from the beginning to "or by that date" there shall be substituted the words "if before 1st January 1980 he" and for the words "had responsibility" there shall be substituted the words "been continuously and effectively responsible";

(f) at the end of the subsection there shall be added the words—

"In this subsection and subsection (6A) "relevant licence" means—

(i) a road freight operator's licence; or

(ii) a licence or other authorisation granted in a member State which authorises the holder to carry goods by road for reward."

(12) In section 46A after subsection (6) there shall be inserted the following subsection—

"(6A) A person shall not be regarded—

(a) for the purposes of subsection (6)(a) as the holder, or one of the holders, of a relevant licence, other than a road freight operator's licence, at any time;

(b) for the purposes of subsection (6)(b) as being employed in a position where he was continuously and effectively responsible for the operation of goods vehicles used under a relevant licence, other than a road freight operator's licence, at any time;

unless he is the holder of a certificate issued by the Minister of Transport or the competent authority of any member State other than the United Kingdom to the effect that he held such a licence or was so employed at that time."

Certificates of qualification

4.—(1) Subject to the provisions of this Regulation, on an application by a person who wishes—

(a) to engage in the occupation of road haulage operator or to manage the transport operations of a road haulage undertaking; or

(b) to engage in the occupation of road passenger transport operator or to manage the transport operations of a road passenger transport undertaking;

in a member State other than the United Kingdom or in Great Britain, the Department shall issue to the applicant a certificate (a certificate of qualification) as to such matters relating to the applicant's repute, professional competence or, where relevant, his financial standing within the meaning of Council Directive (EEC) 74/561 or Council Directive (EEC) 74/562, as the case may be, as—

(a) the Department is satisfied that it may properly certify; and

(b) appear to the Department to be of assistance to the applicant in satisfying the requirement of the law of the other member State or of any part of Great Britain as to those requirements.

(2) A certificate of qualification shall be in such form as may be specified by the Department and shall have effect for the purposes of Article 3, Article 4 or, as the case may be, Article 5 of Council Directive (EEC) 77/796 of 12th December 1977(a) aiming at the mutual recognition of diplomas, certificates and other evidence of formal qualification for goods haulage operators and road passenger transport operators, including measures intended to encourage those operators effectively to exercise their right to freedom of establishment.

(3) The fee for a certificate of qualification shall be £20, to be paid when the certificate is granted and the application shall be made in such form and shall contain such particulars as may be specified by the Department.

(a) O.J. No. L334/37 of 24.12.77

(4) A person applying for a certificate of qualification shall give to the Department such other information as it may reasonably require for the discharge of its duty in relation to the application.

(5) In sections 34 (forgery) and 35 (false statements) of the Act of 1967 the references to a licence under Part II or III of that Act shall include references to a certificate under this Regulation.

Amendment of Regulations

5.—(1) In the Road Service Licensing Regulations (Northern Ireland) 1968(a)—

- (a) in Regulation 6 for the words “section 33(2)” there shall be substituted the words “section 33(2)(a) to (d)”;
- (b) after Regulation 6 there shall be inserted the following Regulation—

Transfer of road service licence where licence to be revoked

“6A.—(1) Where a road service licence granted to any person (in this regulation referred to as “the grantee”) is revoked under section 10(3A) of the Act as from some future date and the business under the licence is carried on by another person (in this regulation referred to as “the successor”) the successor shall be deemed to be the holder of the licence if—

- (a) within one month of the date on which the decision to revoke the licence is notified to the grantee the Department receives from the successor notice stating—
 - (i) the full name of the grantee;
 - (ii) the date from which the revocation of the grantee’s licence is to take effect; and
 - (iii) the full name and address of the successor; and
- (b) within one year of the date on which the decision to revoke the licence is notified to the grantee or such further period, not exceeding six months, as the Department may in any case determine application for a new road service licence is made by the successor.”

(2) In the Road Freight Transport Licensing Regulations (Northern Ireland) 1968(b)—

- (a) in Regulation 13 for the words “section 33(2)” there shall be substituted the words “section 33(2)(a) to (d)”;
- (b) after Regulation 13 there shall be inserted the following Regulation—

Transfer of licence where licence to be revoked

“13A.—(1) Where an operator’s licence granted to any person (in this regulation referred to as “the grantee”) is revoked under section 29(2B) of the Act as from some future date and the business under the licence is carried on by another person (in this regulation referred to as “the successor”) the successor shall be deemed to be the holder of the licence if—

- (a) within one month of the date on which the decision to revoke the licence is notified to the grantee the Department receives from the successor notice stating—
 - (i) the full name of the grantee;
 - (ii) the date from which the revocation of the grantee’s licence is to take effect; and
 - (iii) the full name and address of the successor; and

(a) S.R. & O. (N.I.) 1968 No. 71

(b) S.R. & O. (N.I.) 1968 No. 69

(b) within one year of the date on which the decision to revoke the licence is notified to the grantee or such further period, not exceeding six months, as the Department may in any case determine application for a new operator's licence is made by the successor.

(2) The proviso to regulation 13 applies for the purposes of this regulation as it applies for the purposes of regulation 13."

Sealed with the Official Seal of the Department of the Environment for Northern Ireland on 5th January 1981.

(L.S.)

E. A. Simpson

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

1. These Regulations amend the provisions of the Transport Act (Northern Ireland) 1967 in order to implement, in relation to Northern Ireland, the obligations of the United Kingdom under Council Directive (EEC) 77/796 of 12th December 1977 (O.J. No. L.334/37) aiming at the mutual recognition of diplomas, certificates and other evidence of formal qualifications for goods haulage operators and road passenger transport operators, including measures intended to encourage these operators effectively to exercise their right to freedom of establishment.

2. Regulation 3 for this purpose amends Section 46A of the Act of 1967 (as originally inserted by Regulation 5 of the Road Transport (Qualifications of Operators) Regulations (Northern Ireland) 1977 (S.R. 1977 No. 327)) to enable the Department to deal with applications from persons with qualifications acquired in Member States of the E.E.C. and who wish to establish themselves in road transport operation in Northern Ireland.

3. In particular the amendments made by Regulation 3 require the Department to take into account—

- (a) convictions for offences under the law in any Member State (Regulations 3(7) and 3(8)); and
- (b) evidence of an operator's licence previously held or experience gained in any Member State or of a certificate of professional competence issued by a body or authority designated for the purpose by any Member State (Regulations 3(9) and 3(10), passenger transport, and Regulations 3(11) and 3(12), road freight).

4. Regulation 3 also amends Sections 8, 10, 16, 29 and 33 of the Act of 1967 to enable the Department to defer the revocation of a road service licence or an operator's licence in the event of the death or incapacity of a holder of a licence, a transport manager specified in a licence or a partner whose professional competence is relied upon or in certain other circumstances, in order to allow time for the business to be transferred to another person duly licensed to carry it on, or as the case may be, for a new transport manager or partner to be appointed.

5. Regulation 4 provides for the issue by the Department of certificates of good repute, professional competence and, where relevant, financial standing for presentation to the appropriate authorities in any Member State by persons who wish to engage in the occupation of either road passenger or road haulage operator or to be employed to manage such operations in any Member State. A fee of £20 is payable for a certificate.

6. Regulation 4 also applies penalties prescribed under Sections 34 and 35 of the Act of 1967 for forgery and false statements to certificates issued under that Regulation.

7. Regulation 5 amends the Road Service Licensing Regulations (Northern Ireland) 1968 and the Road Freight Transport Licensing Regulations (Northern Ireland) 1968 in order to provide the transfer procedures required under the provisions of Regulation 3. (See note 4).