

EXPLANATORY MEMORANDUM TO
THE ROAD SERVICE LICENSING (COMMUNITY LICENCE)
REGULATIONS (NORTHERN IRELAND) 2013

SR 2013 No. 287

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and section 56(1) and (5) of the Finance Act 1973 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Regulations give effect to aspects of Regulation (EC) No 1073/2009 (“Regulation 1073/2009”), which provides for a Community licence allowing buses and coaches access to the market in the carriage of passengers by road between Member States, a requirement for an authorisation for the purpose of carrying out regular services, and a requirement for control documents when carrying out occasional services.

3. Background

- 3.1. Regulation 1073/2009, which has direct effect in Member States, recasts existing European Regulations and governs the conditions for the issue and use of Community licences and authorisations. It prescribes the form of the Community licence (Article 4.2 and Annexes I and II), that the Commission shall establish the format of authorisations (Article 6.4), and the period of validity for both Community licences and authorisations (Articles 4.4 and 6.2 respectively).

4. Consultation

- 4.1. A consultation was issued between 28 September 2011 and 23 November 2011. No issues were raised as a consequence of the consultation

5. Equality Impact

- 5.1. Consideration has been given to compliance with section 75 of the NI Act 1998. An Equality Screening Exercise has been completed and as no equality issues have been identified a full Equality Impact Assessment was considered unnecessary.

6. Regulatory Impact

- 6.1. The RIA considered that standardisation of documents and sharing of information would enable more targeted and effective enforcement activity to be undertaken and that this would help to ensure that enforcement resources were used more effectively thus improving road safety and creating a more level playing field for operators in Northern Ireland.

7. Financial Implications

- 7.1. There are no new financial implications as the fees included in the Regulations replicate those currently set for the issue of the control documents

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department has considered the matter of convention rights and community law and is satisfied that there are no matters of concern.

9. EU Implications

- 9.1. The proposed Statutory Rule is necessary in order to comply with the requirements of the EC Regulations.

10. Parity or Replicatory Measure

- 10.1. This measure makes changes to legislation in Northern Ireland to create parity with the regulatory framework that applies in GB. The equivalent GB SI is S.I. 2011 No. 2634.

Regulatory Impact Assessment

1. TITLE OF PROPOSAL

This Regulatory Impact Assessment (RIA) relates to the implementation of EC Regulations 1071/2009, 1072/2009 and 1073/2009 which outline common rules concerning the conditions to be complied with to pursue the occupation of road transport operator; and common rules for access to the international road haulage market.

This RIA is presented as a single document which covers all three Regulations, given that they are so closely interlinked.

A separate Regulatory Impact Assessment has been completed for regulations being made under the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010.

2. PURPOSE AND INTENDED EFFECT OF MEASURE

2.1 Objectives

The objective of this intervention is to ensure that consistent standards are applied to those operating within the road transport industry and enforced across the EU.

The intended effects are to create a more level playing field for international transport operations across the EU and reduce distortion of competition; raise the professional standards of the industry's transport managers; reduce the administrative burdens on regulators, enforcers and operators; and enhance compliance with safety, social and technical rules.

Government intervention is necessary to optimise the introduction of the new Regulations so that positive impacts on the industry are maximised and negative ones eliminated or minimised, with no 'gold-plating'. Thus available derogations have been carefully considered with the aim of minimising burdens and maximising the flexibility of the introduction of the Regulations.

2.2 Background

The EC has found current rules relating to the operator licensing of buses, coaches and lorries are inadequate because of a lack of consistency in the way that they are applied across Member States, resulting in unfair competition between EU countries and varying standards of compliance.

Intervention at EU level has been necessary to provide the clarity and consistency required to address these problems given that this is a trans-national issue.

Following consideration and agreement at Member State level, all three of the above Regulations entered into force in November 2009 and have applied Europe-wide from 4 December 2011, except for the cabotage provisions in Regulation 1072 which have applied from 14 May 2010.

Intervention at UK and NI levels is required to implement, enforce and monitor the new Regulations, so that positive impacts are maximised, regulatory burdens are minimised, and clear guidance is provided.

3. OPTIONS

In their Impact Assessment, the EC considered five options ranging from 'do nothing' to 'full liberalisation.' The preferred option (upon which the adopted Regulations have been based) was 'harmonisation.' The UK government supported this proposed move towards harmonisation although the specific details of the Regulations were subject to negotiation at EU level.

While transport policy is a transferred matter under the remit of the Northern Ireland Assembly, it is the Department's view that harmony with Britain will ensure that there is a level playing field for transport operators established in Northern Ireland, many of whom undertake significant amounts of their business in Britain.

Following the decision of the EC to adopt the harmonisation option, the Department for Transport (DfT) identified three options in terms of Member State implementation. These were:

- Option A – do nothing;
- Option B – full implementation; and
- Option C – partial implementation.

Based on these options, a further consultation exercise was undertaken by this Department between September and November 2011 to inform whether specific derogations should be adopted that would further reduce burdens on business. In the main, respondents were in favour of the implementation path the Department were pursuing. The full synopsis of responses to this consultation can be found [here](#) and on the DOE website.

This RIA considers the same three options for Northern Ireland.

3.1 Option A - Do nothing

EC Regulations 1071/2009, 1072/2009 and 1073/2009 have entered into force and they are directly applicable EU law that has primacy over any domestic legislation that cover the same ground.

Not changing our domestic law to reflect the new EU rules would avoid the costs outlined in full implementation option below. However, it would result in a legally incoherent legislative structure for lorry and bus operator licensing. If this happened and domestic and EU law became unenforceable in Northern Ireland it would threaten to road safety and this would result in infraction proceedings being brought against us. This could result in legal proceedings

by the European Commission and a fine of £11m, with the possibility of further on-going penalties.

Failure to implement could also result in other member states refusing to allow NI vehicles on their roads. This would have a very serious effect on NI business in general and the international bus and road haulage market in particular.

Therefore, in practice, 'do nothing' is not a viable option.

There were no responses to the consultation exercise undertaken by the Department that suggested the EC Regulations should not be implemented.

3.2 Option B - Full implementation

In addition to mandatory requirements, the EC Regulations contain a number of areas where individual member states can decide to adopt, or not, a number of voluntary provisions.

Full implementation in this case, therefore, involves implementing all mandatory provisions plus those voluntary provisions that reduce the burdens on industry and individuals. Adopting these specific provisions will benefit industry or individuals, as they will allow existing flexibilities in domestic legislation to continue.

Voluntary provisions in the Regulations that increase burdens or introduce additional requirements on businesses or individuals have not been taken forward in this or any option, to do so would be gold-plating.

3.3 Option C - Partial implementation

It is possible for member states to just adopt the mandatory requirements of the Regulation.

Partial implementation would involve only implementing mandatory provisions and not considering voluntary provisions.

However, in keeping with one of the Department's strategic aims "to support a thriving economy", it is our general policy to keep the burden of these Regulations on regulators or the industry to an absolute minimum. Failing to adopt provisions that benefit industry is contrary to government policy as it will add to the cost and burdens placed on industry.

4. COSTS AND BENEFITS – SUMMARY

4.1 Costs

4.1.1 Transport Managers

The increased focus on requirement for transport managers in the new Regulations may impact on the industry in terms of constraining growth (because of the limits placed on individual transport manager responsibilities) and may generate additional costs to businesses if the salaries of transport managers are bid-up (due to a shortage of suitably qualified individuals), although there will be a compensating benefit to the transport managers themselves. Placing an absolute limit on the number of vehicles for contracted transport managers is likely to generate a threshold effect, for example in terms of providing disincentives to expand a fleet. It is also likely to have a disproportionate impact on small firms, particularly owner-operators, given that they are more likely to use consultant transport managers and the

Regulation requires a clear contractual arrangement to exist between the operator and that type of transport manager.

The Regulation also contains provisions to reduce the period which operators have to employ a replacement transport manager from one year to six months, which may be extended by a further three months on the death or physical incapacity of the transport manager. The time taken to replace a transport manager varies considerably, particularly depending on the level of experience required. Given that the majority of transport managers would be required to serve a three-month notice period with their existing employer, the new six-month grace period would create some difficulties creating increased competition amongst operators to secure the service of an appropriately qualified transport manager. One possible consequence of this would be to push up transport manager wage levels which will result in a cost to operators but a corresponding benefit to the managers themselves. The impact will be greatest for operators based in areas which are viewed by potential employees as less desirable locations to live and work.

4.1.2 Financial Standing

It is assumed that the majority of operators will already produce annual accounts but an additional cost will be incurred for those that do not produce certified accounts (this is thought likely to impact mainly on very small road haulage operators). The requirements may also place practical difficulties on small or newly established operators (in terms of demonstrating the required assets).

4.1.3 Certificates of Professional Competence (CPC), Third-Party Qualifications and 'Grandfather Rights'

Changes relating to the definition of 'grandfather rights' may have an impact on some operators who do not meet the 10-year requirement, and will be required to either pass the CPC test or retire from the industry. While the number of operators affected is likely to be fairly small, discussions with stakeholders suggest that the industry has an older age profile, particularly in relation to small, family-run companies.

4.1.4 Establishment and other issues

It is estimated that few additional costs will be incurred by bus and haulage businesses as a result of the requirement to provide evidence of an address for an operating centre.

4.1.5 Access to the International Market

Road transport cabotage only represents a small share of the total road transport market at EU level. Cabotage is currently allowed on a 'temporary' basis. The new definition aims to clarify the definition of temporary, but as a result could increase competition for UK and NI operators by increasing opportunities for mainland European and ROI operators to undertake operations in the UK and NI.

Northern Ireland is unique within the United Kingdom in that it shares a land border with another Member State, the Republic of Ireland. This clearly increases the potential for cabotage operations to be undertaken.

4.1.6 Goods Vehicles Cabotage

The former legislative framework allows for cabotage operations to be undertaken on a temporary basis without defining what 'temporary' means. The new regulation specifies a set number of operations which may be undertaken in a given timeframe, shifting the burden of proof from enforcement bodies to operators. This may have a positive impact on operators in Northern Ireland as it will enhance enforcement powers against foreign and ROI operators who seek to abuse the system.

At present, cabotage from mainland Europe does not have a significant impact on the UK haulage industry and if current penetration rates were maintained then no significant additional impacts would be expected to result in Britain.

However, it is likely that the number of contracts in the UK and NI won by non-resident operators will increase as a result of the changes. Consumers may benefit from reduced costs, although this benefit will be partially offset by the impact on domestic operators in terms of reduced revenue. The impact of cabotage extends beyond the direct loss of market share, in particular, through the threat of foreign competition having a wider impact on buyers' price expectations. Though there is no quantitative evidence as to the scale of this wider impact on operator margins evidence gathered by associations indicates a "footprint" effect from overseas and ROI hauliers quoting low rates to one or two customers, which then circulate lowering price expectations for some buyers of haulage services. The presumption is that changes in this area will increase competition which would be beneficial, although difficulties arise because of distortions in tax regimes across the EU, particularly differential pricing of fuel (which is outside of the scope of this Regulation).

4.1.7 Bus and Coach Cabotage

Regulation (EC) No 1073/2009 sets aside the safeguard measures laid down in current legislation which makes provision for appeal to the EC in the event of a serious disturbance of the internal transport market in a given geographical area. It is the Department's view that these new rules open up markets to greater competition from foreign operators whilst reducing the degree of protectionism previously afforded to Member States.

While this may be of benefit to consumers in securing lower prices, there may be an impact for operators in border areas of NI, where competition from neighbouring operators in ROI may be difficult to maintain due to the lower operating costs for southern operators.

4.1.8 Cost to Government

Standardisation of certified copies of Community Licences and Driver Attestations/Community Authorisations will be required under the Regulation, specifically inclusion of enhanced security features and serial numbers, which will be entered into a national database. Current Community Authorisations will remain valid until their date of expiry.

This will create some short-term transitional costs to DVA in terms of standardisation but this is not likely to be significant. In addition, it should be noted that DVA could pass on some or all of this increased administration cost to the industry, although this would merely affect the incidence of the costs involved.

There is an existing reciprocal arrangement requiring notification of defects on foreign vehicles to the appropriate licensing authority although the response from some Member States is considered to have been disappointing and there is therefore scope for improving the effectiveness of exchange of information. VOSA presently has a web-based system for collating information about licence holders, therefore it is considered that the foundation for increased sharing of information with other Member States is in place. The Department plans to contribute details of Northern Ireland freight transport licence holders to this database in the near future.

However, in order to meet the new requirements a number of additional fields would need to be added to the current database – this work will be done by VOSA. However, this is not required to be implemented until January 2013 and the Commission has yet to finalise some of the detailed IT specification for interconnection, so costs are not presented at this stage.

It should be noted that any additional costs to the DVA will have to be recovered through fees and this may create an additional cost for operators.

4.2 **Benefits**

The adopted Regulations will mainly affect road transport operators who carry goods or passengers for hire or reward.

Overall the Regulations are designed to provide more consistent interpretation and enforcement of the existing rules thereby leading to a more level playing field for operators across Member States, assuming a common level of application. The Regulations would also be expected to have a positive impact on road safety given that there is evidence in the UK relating to higher non-compliance of international operators and involvement in accidents –

although questions remain about how far road safety issues occur as a result of levels of enforcement and regulation, or other factors such as differences in driving practice/standards.

Some of elements from Regulation 1071, such as Good Repute, will help to provide a level playing field whereby all operators must comply with legislative requirements. A road freight compliance survey completed by DVA in 2011, which was conducted on a random sample of 926 heavy goods vehicles (+3.5 tonnes), concluded that 37% of vehicles checked had defects, 23% had prohibitive defects.¹ The introduction of the new legislation should create fairer competition by ensuring that those commercial vehicles which were not roadworthy make the necessary improvements or face the risk of prosecution.

The general benefits arising from the implementation of these Regulations are listed below.

4.2.1 Access to occupation

Defining transport manager responsibilities may bring safety and / or operational benefits such as:

- assurance to operators that transport managers are properly qualified;
- assurance that transport managers operate in the best interest of the operator which they are employed by or contracted to, and that they are not overstretched in terms of either vehicle numbers or services provided to other operators; and
- a statutory basis for the refusal, suspension or withdrawal of an authorisation for a transport manager who is deemed unfit.

The tightening of grandfather rights may also generate benefits in terms of improved confidence in the industry and standardised working practices.

4.2.2 Access to markets

¹ Northern Ireland Goods Vehicle Compliance Check 2011, DVA (<http://www.doeni.gov.uk/hgvcomp11.pdf>)

Standardisation of documents and sharing of information will enable more targeted and effective enforcement activity to be undertaken; this will help to ensure that enforcement resources are used more effectively and again this will improve road safety and create a more level playing field for UK and NI operators.

In addition, the improved definition of goods vehicle cabotage may result in benefits in terms of reduced enforcement costs (particularly as the Regulation may reduce the length of legal hearings, given the increased clarity around the definition of cabotage); there is also potential for increased logistics efficiency which may benefit customers. The definition will also provide clarity for UK and NI hauliers who wish to seek opportunities to undertake cabotage in other EU countries.

These benefits are considered to have positive repercussions on road safety in that by ensuring transport managers are properly qualified and not overburdened with responsibility, safety standards of goods vehicles and buses and coaches may improve.

4.2.3 Road Safety

Each fatality on Northern Ireland's roads represents an economic cost of £1.7m and each serious injury represents a cost of £187,000².

These costs account for many economic as well as social and environmental factors including loss of output, loss of earnings, ambulance costs and costs of hospital treatment and human costs representing pain, grief and suffering to the casualty, relatives and friends.

Using these figures it is possible to estimate, in cost-benefit terms, the cost of road traffic accidents as a result of goods vehicles. Between 2008-10 inclusive, for example, the total cost of road traffic collisions caused by goods vehicles (>3.5T) was £29.4m (£18.7m in terms of fatal accidents and £10.7m

² Transport Analysis Guidance, Guidance Document 3.4.1 (The Accidents Sub-Objective) – April 2011

in terms of serious injured). These figures exclude those that were slightly injured; therefore the figure of £29.4m for this period is underestimated.

5. ENFORCEMENT AND SANCTIONS

Domestic legislation will be made in order to ensure consistency within the NI jurisdiction. This will provide the DVA and the police full powers to enforce infringements of the new EC Regulations.

6. OTHER IMPACT ASSESSMENTS

6.1 Equality Impact Assessment (EqIA)

An EqIA screening exercise was undertaken. The exercise identified that the regulations would have a disproportionate affect on males and adults, as the industry is male-dominated and will obviously not affect children.

It was agreed that this policy should not be subject to a full EQIA as it comprises a range of measures which will implement EC Regulations in Northern Ireland. The work necessary will ensure that domestic legislation is in harmony with EC legislation. It applies only to those involved in the road transport industry and should not adversely or otherwise affect the service provided to any of the groups listed in Section 75.

6.2 Rural Proofing

A rural proofing exercise was undertaken in advance of the publication of the consultation document.

The exercise concluded that it is not anticipated that the implementation of the Regulations will have a significant impact on rural areas in Northern Ireland. The only impact which seems apparent is a positive one which may arise from more competitive prices being offered for passenger transport services given the further relaxation of cabotage regulations in Regulation EC 1073/2009.

There were no further comments received during the consultation process that would suggest that this position should be reviewed.

6.3 Small Business Impact Test

There is evidence to suggest that some elements of the Regulations will impact disproportionately on small firms, in particular the defining of responsibilities of transport managers may create a disincentive for SMEs to expand their vehicle fleet.

Both the road haulage and passenger transport sectors contain a significant percentage of small businesses.

The Department proposes to adopt a derogation that would allow employed transport managers also to work on a part-time basis as consultant transport managers. This will provide extra transport manager resource to the industry, which should ameliorate the risk.

7. CONSULTATION

A consultation was issued on 28 September 2011 and ran until 23 November 2011. Its purpose was to seek views on the Department's approach to implementing the requirements of the EC Regulations 1071/2009, 1072/2009 & 1073/2009 on road transport operations and on new fitness and finance requirements for own account operators.

In total, twelve consultees responded, four of who simply noted/acknowledged the proposals but did not express any views on them. The substantive views of the remaining eight consultees have been considered, with their views recorded in the synopsis of responses, which can be found [here](#) and on the DOENI website.

In the main, respondents were in favour of the way the Department were implementing the EC Regulations.

8. RECOMMENDATION

That the Department will implement OPTION B (Full implementation) which includes implementing all mandatory provisions plus those voluntary provisions that reduce the burdens on industry and individuals.

Adopting these specific provisions will benefit industry or individuals, as they will allow existing flexibilities in domestic legislation to continue. Voluntary provisions in the Regulations that increase burdens or introduce additional requirements on businesses or individuals have not been taken forward in this or any option, to do so would be gold-plating.

LIST OF REGULATIONS TO FACILITATE THE IMPLEMENTATION OF EC REGULATIONS 1071/2009, 1072/2009 AND 1073/2009.

- The Goods Vehicles (Community Licences) Regulations (Northern Ireland) 2013;
- The Road Service Licensing (Community Licences) Regulations (Northern Ireland) 2013; and
- The Road Passenger Transport (Qualifications of Operators) Regulations (Northern Ireland) 2013.

DECLARATION

I have read the Regulatory Impact Assessment and am satisfied that the benefits justify the costs.

Signed:

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