

2008 No. 1965

ROAD TRAFFIC

**The Vehicle Drivers (Certificates of Professional Competence)
(Amendment) (No. 2) Regulations 2008**

<i>Made</i>	- - - -	<i>21st July 2008</i>
<i>Laid before Parliament</i>		<i>25th July 2008</i>
<i>Coming into force</i>	- -	<i>1st September 2008</i>

The Secretary of State for Transport, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a), section 56(1) and (2) of the Finance Act 1973(b) and section 71(2) of the Criminal Justice and Court Services Act 2000(c), makes the following Regulations.

The Secretary of State for Transport is a Minister designated 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(d).

The Treasury has consented under section 56(1) of the Finance Act 1973 in respect of regulations 5, 6(d) to (g), 10, 11(b) and 12 and Scottish Ministers have been consulted under section 71(3) of the Criminal Justice and Court Services Act 2000 in respect of regulation 2.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Vehicle Drivers (Certificates of Professional Competence) (Amendment) (No. 2) Regulations 2008 and come into force on 1st September 2008.

(2) These Regulations (except regulation 9 (appeals)) extend to Northern Ireland.

Amendment of the Access to Driver Licensing Records Regulations

2.—(1) The Motor Vehicles (Access to Driver Licensing Records) Regulations 2001(e) are amended as follows.

(2) In regulation 2 (purposes for which access may be given)—

(a) for “Police Information Technology Organisation” substitute “National Policing Improvement Agency(f)”; and

(b) in paragraph (a)—

(a) 1972 c. 68.

(b) 1973 c. 51.

(c) 2000 c. 43. Section 71 was amended by the Serious Organised Crime and Police Act 2005 (c. 15) (section 123(1) and paragraph 161 of Schedule 4) and the Police and Justice Act 2006 (c. 48) (paragraph 75(1), (2) and (3) of Schedule 1).

(d) S.I. 1975/1707.

(e) S.I. 2001/3343.

(f) The National Policing Improvement Agency was established by section 1 of the Police and Justice Act 2006.

- (i) at the end of subparagraph (iv) omit “and”; and
- (ii) at the end add—
 - “;and
 - (vi) the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007;”.

Amendment of the 2007 Regulations

3. The Vehicle Drivers (Certificates of Professional Competence) Regulations 2007(a) are amended as follows.

Interpretation

4. In regulation 2(1) (interpretation) after the definition of “initial CPC test” insert—
““NVT certificate” means an authorisation issued by the competent authority under regulation 4(5)(d) or 8B(3);”.

Persons who must take initial CPC test

5. After regulation 4(5) (persons who must take initial CPC test) insert—
“(5A) A person who wishes the competent authority to issue an NVT certificate to him under paragraph (5)(d) must make a written application to the competent authority and pay to it a fee of £25.
(5B) The competent authority may waive in whole or in part the fee payable under paragraph (5A).”.

Initial CPC test

6. In regulation 5 (initial CPC test)—
- (a) after paragraph (2) add—
“(2A) The competent authority may vary any conditions imposed under paragraph (2) by notice in writing to the person to whom the approval was given.”,
 - (b) after paragraph (5) add—
“(5A) A person must pass the theoretical test referred to in the table at the end of this regulation before taking the practical test referred to there and must pass the practical test not more than 24 months after passing the theoretical test.”,
 - (c) in paragraph (6) for “An applicant for the initial CPC test” substitute “Where an initial CPC test is organised by a competent authority, an applicant for the test”,
 - (d) after paragraph (6) insert—
“(6A) A person approved under paragraph (1) shall pay to the competent authority in respect of each test which it conducts a fee of £41 for a practical test and £30 for a theoretical test.
(6B) The competent authority may waive in whole or in part the fee payable under paragraph (6) or (6A).”,
 - (e) in paragraph (7) for “That sum” substitute “The sums referred to in paragraphs (6) and (6A)”,
 - (f) after paragraph (7) insert—

(a) S.I. 2007/605; amended by S.I. 2008/506.

“(8) For the purposes of this regulation, a test commences during normal hours if the time for which the test appointment is made is at or after 0830 hours but not after 1630 hours on a working day.

(9) In paragraph (8), “working day” means a day other than a Saturday, Sunday, bank holiday, Christmas Day or Good Friday (and “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(a)).”, and

(g) in the table at the end of the regulation—

- (i) in the first column for “Practical test” substitute “Practical test commencing during normal hours” and in the second column for “£41” substitute “£55”; and
- (ii) at the end add in the first column “Practical test commencing at any other time” and in the second column “£63”.

7. After regulation 5 insert—

“Further requirements at tests: initial CPC test

5A.—(1) A person submitting himself for either the theoretical test or the practical test shall before the test commences—

- (a) produce to the person conducting the test an appropriate licence authorising him to drive a motor vehicle of a class included in the category in respect of which the test is to be taken and, where that licence has a counterpart, the counterpart of that licence; and
- (b) except where he has produced an appropriate licence containing his photograph, satisfy the person conducting the test as to his identity in accordance with paragraph (3).

(2) A person submitting himself for either the theoretical test or the practical test who produces a licence which fails to satisfy the person conducting the test, after an examination or otherwise, that it is an appropriate licence as required under paragraph (1) must surrender the licence forthwith to the person conducting the test.

(3) For the purposes of this regulation, a person conducting a test may be satisfied as to a person’s identity from a valid passport.

(4) In this regulation, “appropriate licence” means a licence authorising the person submitting himself for the test to drive a motor vehicle of a class included in the category in respect of which the test is to be taken which—

- (a) is either—
 - (i) a driving licence;
 - (ii) a provisional licence within the meaning of section 108(1) of the 1988 Act or article 19D(1)(b) of the 1981 Order; or
 - (iii) a Community licence;
- (b) is valid at the date of the test; and
- (c) bears the signature of the person who has submitted himself for the test.”.

Periodic training courses: further requirements

8. In regulation 6 (persons providing periodic training courses)—

- (a) for paragraph (5) substitute—

(a) 1971 c. 80. Schedule 1 to the Banking and Financial Dealings Act 1971 was amended by the St. Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2) (section 1).
(b) Article 19D(1) was inserted by the Road Traffic (Amendment) (Northern Ireland) Order 1991 (S.I. 1991/197 (N.I.3)) (article 3).

“(5) Where it appears to the competent authority that—

- (a) any conditions of an approval given under paragraph (3)(a) are not being complied with; or
- (b) an approval under paragraph (3)(a) or (b) or (9) was given in error,

the competent authority may send notice to the person to whom the approval was given that it is minded to withdraw or suspend its approval.”,

(b) for paragraph (10) substitute—

“(10) A person to whom these Regulations apply may take a periodic training course approved under this regulation if that person is—

- (a) a national of a member State and normally resident in the United Kingdom;
- (b) a national of a member State and works in the United Kingdom, or
- (c) a national of a third country and authorised to work in the United Kingdom.”, and

(c) at the end add—

“(11) The provisions of regulation 5A(1), (3) and (4) (further requirements at tests: initial CPC test) shall apply in respect of a periodic training course and for that purpose a reference in those provisions to a test shall be read as a reference to a periodic training course.”.

Appeals

9. After regulation 6, insert—

“Appeals

6A.—(1) A person who is aggrieved by a decision of the competent authority—

- (a) not to approve a person to provide periodic training courses under regulation 6(3)(a) (persons providing periodic training courses);
- (b) not to approve a periodic training course which a person wishes to provide under regulation 6(3)(b);
- (c) to withdraw an approval under regulation 6(7);
- (d) to suspend an approval under regulation 6(7); or
- (e) not to approve a training course under regulation 6(9),

may by notice in writing appeal to the Transport Tribunal^(a) within the period of 28 days beginning with the day on which the notice of the decision was given.

(2) On the appeal the Transport Tribunal may make such order for the grant or refusal of approval for the person or course or for the withdrawal, suspension or continuation of an approval (as the case may be) as they think fit.

(3) An order on an appeal under paragraph (1)(a) or (c) may direct that an application by the appellant for an approval to provide periodic training courses under regulation 6(3)(a) shall not be entertained before the expiration of such period, not exceeding four years, beginning with the day on which the order is made, as may be specified in the order.

(4) If the Tribunal considers that any evidence adduced on an appeal has not been adduced to the competent authority before it gave the decision to which the appeal relates, the Tribunal may (instead of making the order under paragraph (2)) remit the matter to the competent authority for it to reconsider the decision.”.

(a) The Transport Tribunal is constituted under section 117 of, and Schedule 4 to, the Transport Act 1985 (c.67).

Record of periodic training by competent authority

10. In regulation 7(1)(b) (record of periodic training by competent authority) omit “a fee of £5” and at the end add “a fee equal to the sum of £1.25 multiplied by the duration of the course in hours and for this purpose part of an hour shall be treated as an hour”.

Driver Qualification Card

11. In regulation 8 (driver qualification card)—

(a) for paragraph (1) substitute—

“(1) The competent authority shall issue a driver qualification card to a person to whom this regulation applies if—

(a) it is satisfied that that person has passed the initial CPC test in accordance with regulation 5(1); or

(b) (i) it is satisfied that that person has completed 35 hours of periodic training entitling him to a periodic CPC; and

(ii) the completion of that training has been notified to a competent authority under regulation 7(1).”.

(b) omit paragraphs (2), (3), (5), (6) and (7),

(c) in paragraph (4) for the words from “who” to “paragraph (3)” substitute “to whom a driver qualification card is issued under paragraph (1), that card”, and

(d) at the end add—

“(8) This regulation applies to a person who—

(a) (i) is a national of a member State and normally resident in the United Kingdom;

(ii) is a national of a member State and works in the United Kingdom; or

(iii) is a national of a third country and authorised to work in the United Kingdom; and

(b) holds a driving licence in the form of a photocard.”.

12. After regulation 8 insert—

“8A.—(1) A person (other than a person to whom regulation 8 applies) may apply to the competent authority for a driver qualification card if he has passed the initial CPC test in accordance with regulation 5(1).

(2) A person who falls within regulation 6(10) may apply to the competent authority for a driver qualification card if he has completed 35 hours of periodic training entitling him to a periodic CPC and either—

(a) he does not hold a driving licence in the form of a photocard; or

(b) some or all of the periodic training which he has completed was undertaken outside the United Kingdom.

(3) The person shall send to the competent authority—

(a) the fee specified in paragraph (6);

(b) if the competent authority so requests, a photograph of that person in such form as it may require; and

(c) in the case of an application made under paragraph (2), such documents or information as the competent authority may require in respect of periodic training undertaken by that person outside the United Kingdom.

(4) Upon receipt of the items specified in paragraph (3), the competent authority shall issue that person with a driver qualification card if it is satisfied that the person has (as the case may be)—

(a) passed the initial CPC test; or

(b) completed the periodic training entitling him to a periodic CPC.

(5) In respect of persons who make an application under this regulation, the driver qualification card issued under paragraph (4) shall be the CPC for the purposes of Article 6(1)(b) (CPC awarded on the basis of tests) or Article 8(1) (CPC certifying periodic training) of the Directive, as the case may be.

(6) The fee shall be £25.

(7) The competent authority may waive the fee specified in paragraph (6) in whole or in part if it thinks fit.

(8) For the purposes of paragraph (4)(b) the competent authority shall take account of periodic training undertaken outside the United Kingdom.

Damaged, lost or stolen documents

8B.—(1) If a driver qualification card or an NVT certificate is damaged, lost or stolen, the person to whom that document was issued shall as soon as practicable notify the competent authority in writing and shall provide such information or documents concerning the damage, loss or theft as the competent authority may require.

(2) If a driver qualification card or an NVT certificate is found at any time after the competent authority has been notified in accordance with paragraph (1) of the loss or theft of it, the person to whom that document was issued shall, if it is in his possession, return it to the competent authority, or if it is not in his possession, but he becomes aware that it is found, he shall take all reasonable steps to take possession of it and, if successful, shall return it to the competent authority as soon as practicable.

(3) If a driver qualification card or an NVT certificate has been damaged, lost or stolen, the competent authority must upon payment to it of a fee of £25 issue a replacement document to the person to whom that document was originally issued.

(4) The competent authority may waive the fee specified in paragraph (3) in whole or in part if it thinks fit.

(5) A person who does not comply with the requirements of paragraph (1) or (2) is guilty of an offence.

(6) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

Time limits for obtaining a CPC

13. In regulation 9 (time limits for obtaining a CPC) omit paragraph (6).

Requirement to carry and produce evidence of CPC or of training exemption in vehicle

14. In regulation 11 (requirement to carry and produce evidence of CPC or of training exemption in vehicle)—

(a) in paragraph (1) for “vehicle” substitute “relevant vehicle”;

(b) for paragraph (4) substitute—

“(4) Paragraph (1) does not apply to a person—

(a) who has been issued with a driver qualification card by the competent authority under regulation 8(1) or 8A(4) but has not yet received it; or

(b) whose driver qualification card has been damaged, lost or stolen, who has notified the competent authority under regulation 8B(1) and who has paid the fee specified in regulation 8B(3) but who has not yet received a replacement card.”,

(c) for paragraph (5) substitute—

“(5) Subject to paragraph (5A), a person to whom regulation 4(5) applies who does not carry an NVT certificate with him in the relevant vehicle which he is driving is guilty of an offence.”, and

(d) after paragraph (5) insert—

“(5A) Paragraph (5) does not apply to a person—

- (a) who has been issued with an NVT certificate by the competent authority but has not yet received it; or
- (b) whose NVT certificate has been damaged, lost or stolen, who has notified the competent authority under regulation 8B(1) and who has paid the fee specified in regulation 8B(3) but who has not yet received a replacement certificate.

(5B) In paragraphs (4)(b) and (5A)(b), the reference to the fee specified in regulation 8B(3) is a reference to the fee insofar as it has not been waived under regulation 8B(5).”.

Document errors

15. For paragraph (1) of regulation 12 (document errors) substitute—

“(1) Where it appears to the competent authority that—

- (a) an NVT certificate, or
- (b) a driver qualification card issued by it under regulation 8(1), 8A(4) or 8B(3),

was granted in error, or with an error or omission in the particulars specified in it, it may serve a notice in writing on that person revoking it and requiring him to surrender it to the authority forthwith.”.

Forgery and false statements

16. In regulation 13 (forgery and false statements)—

- (a) in paragraph (1)(a) omit “”4(5)(d) or” and at the end add “or an NVT certificate”, and
- (b) in paragraph (3) for “the issue of a driver qualification card under regulation 8(3)” substitute “the issue of a driver qualification card under regulation 8(1), 8A(4) or 8B(3) or the issue of an NVT certificate”.

Signed on behalf of the Secretary of State for Transport

18th July 2008

Jim Fitzpatrick
Parliamentary Under Secretary of State
Department for Transport

We approve the making of these Regulations

21st July 2008

Dave Watts

Claire M Ward
Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Motor Vehicles (Access to Driver Licensing Records) Regulations 2001 (“the 2001 Regulations”) and the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007 (“the 2007 Regulations”).

The 2001 Regulations are made under section 71 of the Criminal Justice and Court Services Act 2000 and determine the purposes for which information held under Part 3 of the Road Traffic Act 1988 (driver licensing) may be given to the National Policing Improvement Agency. Regulation 2 of these Regulations amends regulation 2 (purposes for which access may be given) of the 2001 Regulations to add the prevention, investigation and prosecution of a contravention of a provision of the 2007 Regulations as one of those purposes.

Under regulation 4 (persons who must take the initial CPC test) of the 2007 Regulations, subject to certain exceptions, a person to whom the regulations apply is not permitted to drive a relevant vehicle on a road on or after a specified date unless he has successfully completed the initial CPC test. One exception is where a person is undergoing a vocational training course and the competent authority has issued that person with an NVT certificate (regulation 4(5)). Regulation 5 of these Regulations amends regulation 4 of the 2007 Regulations to make provision for applying to the competent authority for an NVT certificate, including the charging of a fee of £25.

Regulation 5 (initial CPC test) of the 2007 Regulations makes provision for the organisation of the initial CPC test by the competent authority or by a person approved by it. The initial CPC test includes a theoretical test and a practical test. Regulation 6 of these Regulations amends regulation 5 so as to—

- (a) require the theoretical test to be taken before the practical test and require the practical test to be passed not more than 24 months after passing the theoretical test;
- (b) make provision for the payment of a fee by an approved person for the tests which it conducts;
- (c) increase the fee for a practical test conducted by a competent authority during normal working hours from £41 to £55; and
- (d) increase the fee for a practical test conducted by a competent authority out of normal working hours from £41 to £63.

A person submitting himself for a theoretical test, a practical test or a periodic training course is to produce to the person conducting the test or course an appropriate licence or other evidence of his identity (new regulation 5A inserted by regulation 7 and regulation 8(c) of these Regulations).

Under regulation 6 (persons providing periodic training courses) of the 2007 Regulations, a person who wishes to provide periodic training courses must make a written application to the competent authority for approval. Regulation 8(a) amends regulation 6(5) to allow the competent authority to withdraw or suspend an approval of a person or a course which it has approved in error.

Regulation 8(b) amends regulation 6 of the 2007 Regulations so as to provide that periodic training courses can be taken by nationals of member States who work in the United Kingdom as well as those who normally reside there.

Regulation 9 inserts a new regulation 6A (appeals) which provides for appeals to be made to the Transport Tribunal against certain decisions of the Secretary of State under the 2007 Regulations.

A person approved under regulation 6(3)(a) of the 2007 Regulations to provide periodic training courses has to notify the competent authority each time a person to whom it has provided training completes a periodic training course and to pay a fee upon each notification (regulation 7(1) of the 2007 Regulations). Regulation 10 changes the basis for calculating the fee.

Regulation 11 amends regulation 8 (driver qualification card) of the 2007 Regulations to place a requirement on the competent authority to issue a driver qualification to certain persons and to remove the requirement for those persons to pay a fee for the card. Regulation 12 inserts new regulation 8A to permit certain other persons to apply for a driver qualification card on payment of a fee of £25.

Regulation 12 also inserts new regulation 8B which deals with damaged, lost and stolen documents. The holder of a driver qualification card or an NVT certificate is required to notify the competent authority if the document is damaged, lost or stolen (regulation 8B(1)). Failure to do so is an offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale (regulation 8B(5) and (6)). Regulation 8B(3) requires the payment of a fee of £25 for a replacement driver qualification card or a replacement NVT certificate.

Regulations 14 to 16 amend regulations 11 (requirement to carry and produce evidence of CPC or of training exemption in vehicle), 12 (document errors) and 13 (forgery and false statements) of the 2007 Regulations in consequence of the amendments made by regulations 11 and 12. Regulation 11 of the 2007 Regulations is amended so that a person who has notified the competent authority that his driver qualification card or NVT certificate has been damaged, lost or stolen and paid the fee for a replacement does not commit an offence under regulation 11 (regulation 14(d)).

A full impact assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available from the Driving Standards Agency, Policy Branch, The Axis, Upper Parliament Street, Nottingham NG1 6LP and on the Driving Standards Agency's website at www.dsa.gov.uk. The impact assessment is annexed to the explanatory memorandum which is available alongside the instrument on the Office of Public Sector Information website at www.opsi.gov.uk.

STATUTORY INSTRUMENTS

2008 No. 1965

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