

EXPLANATORY MEMORANDUM TO
THE GOODS VEHICLES (LICENSING OF OPERATORS) (AMENDMENT)
REGULATIONS 2013

2013 No. 1750

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument exempts foreign goods vehicle operators from the requirement to hold an Operator's licence when their vehicles are being used for car transportation around the peak vehicle registration periods each March and September. EU cabotage rules introduced by EC Regulation 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market ("Regulation 1072/2009") have had an impact on the ability of UK car manufacturers and retailers to meet retail and export demand for cars at the peak periods. Traditionally the sector has used vehicles from other Member States to supplement the UK fleet at the peak periods. These operators already hold Operator's licences in their country of operation, unless exempt in accordance with EU law.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This instrument makes regulatory changes to exempt users of certain goods vehicles, essentially car transporters, from the requirement to hold an Operator's licence while carrying out an unlimited number of cabotage operations during the peak registration periods.

4.2 This Regulation creates an additional exemption from the obligation for a user of a goods vehicle to have a UK Operator's Licence under the Goods Vehicles (Licensing of Operators) Act 1995. Various exemptions are already available for different kinds of use, and more than one exemption may apply to a particular vehicle's use on a particular occasion. This exemption is in addition to that for the limited cabotage operations allowed under the EU Regulations, but applies only to car transportation in Great Britain in two periods annually of around 6 weeks each. This specific activity in these periods is allowed without any limit on the number of delivery trips or any need for an incoming international laden journey.

4.3 It is intended that a Draft Motor Vehicles (International Circulation) (Amendment) Order 2013, will be laid before Parliament, amending article 5 of the Motor Vehicles (International Circulation) Order 1975 to exempt foreign car transporters from excise duty when they are brought temporarily into the UK to conduct these specific cabotage activities in Great Britain in the two periods in each year. Relief from excise duty is already available to vehicles used for cabotage operations in the UK provided they are conducted in accordance with the provisions of Regulation 1072/2009.

5. Territorial Extent and Application

5.1 The instrument is limited in its application to the use of vehicles for specific cabotage operations in Great Britain.

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

7.1 The proposals support the growth agenda as it will enable the motor manufacturing and distribution industry to meet demand for the supply of new vehicles to UK buyers and for export throughout the year.

7.2 Regulation 1072/2009 revised the previous EU rules governing road haulage cabotage with the intention of clarifying the extent to which carrying out cabotage in another Member State on a temporary basis could be readily identifiable. Chapter III provides an entitlement to carry out up to 3 cabotage operations in the 7 day period following the last delivery on the incoming international journey. Once the limit has been reached the vehicle must leave and re-enter with a new international load in order to undertake further cabotage. These rules were intended to provide a level playing field for road haulage businesses in Member States, but, as indicated by the 5th recital to the Regulation, represent a transitional state of affairs in that the road haulage market is not harmonised throughout the EU and Member States are at liberty to effect greater liberalisation of cabotage in their own territory if they wish.

7.3 Generally, the clarity provided by the 2009 EU rules has been welcomed by industry in place of less certain application of the former rules on 'temporary use'. However, the explicitness of the new rules has had an appreciable and restrictive impact on the ability to move sufficient motor vehicles in peak periods of demand around the new car registration peaks of March and September. Car transporting vehicles are highly specialised and are not used for other purposes. General haulage vehicles are generally not suitable for the effective distribution of cars. Whereas the core demand outside the peak periods is satisfactorily met by UK vehicles operating domestically at times of peak demand vehicles from other Member States are needed to supplement the UK fleet.

Regulation 1072/2009 has the effect of restricting the amount of work that non UK hauliers can legally undertake on each visit to the UK.

8. Consolidation

8.1 There is no intention to consolidate the provisions with other measures.

9. Consultation outcome

9.1 The policy is of specialist interest and was the subject of a 4-week targeted consultation aimed at car manufacturers, vehicle distribution companies and the retail sector, held between 9 May and 5 June 2012.

9.2 There were 13 responses to the consultation exercise, 10 of which were supportive of the proposals. Those supporting the proposal include Honda, Jaguar Land Rover, the Ford Motor Company, Volkswagen, the Road Haulage Association and the Society of Motor Manufacturers and Traders.

9.3 The Association of European Vehicle Logistics and the Ford Motor Company both suggested that any relaxation period should start two weeks before the peak months, i.e. last two weeks in February and last two weeks in August. They suggested that this would allow more vehicles to be delivered for the start of the new registration periods. The Department agrees that it is sensible to allow the relaxation periods to commence before the start of the registration periods and to accommodate the request has proceeded on the basis of the relaxation periods, over and above existing cabotage allowances, covering 22 February to 31 March and 25 August to 30 September each year.

9.4 There were 3 negative responses:

i. Autologic (a UK based car transportation company) suggested that they would have to reduce the size of their fleet if transport operators from other Members States were able to operate in GB without restriction for 2 months of the year. In response, the Department does not agree and would point out that non-UK transporters are more expensive to hire than domestic equivalents and they are expected to be used by the sector only when the domestic supply is exhausted.

ii. The Freight Transport Association (FTA) said that instead of relaxing the cabotage rules for non-UK car transporters, the Department should encourage the foreign owners of these vehicles to become established in the UK, albeit for temporary or time-defined periods. The FTA suggested that this could be achieved through the existing operator licensing, vehicle registration and taxation regimes and would reassure UK operators that these visiting operators were meeting the same high safety standards and equally contributing to the costs of UK infrastructure. In response, the Department would point out that the FTA's proposals are complex and bureaucratic for short-term use, could have far reaching consequences beyond the narrow issue of peak transportation of cars, and would require major legislative change. Operators based elsewhere in the EU are already

subject to harmonised requirements on Operator licensing, roadworthiness and drivers' hours.

iii. The Traffic Commissioners (TCs) pointed out that foreign goods vehicles were generally more likely to be non-compliant than domestic vehicles and suggested that there was a risk to road safety and fair competition from the proposal. The Department recognised the point made by the TCs that roadworthiness prohibition levels of foreign hauliers were higher than domestic hauliers. Nevertheless, the Department is not convinced that this is likely to be a significant issue. Car transporters are highly specialised and costly pieces of equipment and we believe they are less likely to be non-compliant with routine roadworthiness requirements than the average HGV. We are continuously improving our risk-based enforcement systems to target non-compliant operators and have also been influenced by new information exchange systems being introduced EU-wide in early 2013 that will improve enforcement for vehicles visiting from other EU states.

9.5 A full summary of responses is on the Department for Transport website at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/86126/cabotage-response.pdf.

10. Guidance

10.1 The Department will be issuing guidance to the sector in advance of the relaxation to ensure manufacturers and retailers are aware of the proposals.

11. Impact

11.1 An Impact Assessment (IA) is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk. The IA shows that the effect of adding this exemption from the obligation to hold an Operator's licence is to enable UK business to hire foreign vehicle transporters to conduct an unlimited number of trips within the UK, rather than being restricted by the EU cabotage limits, during the March and September car delivery peaks. This will lead to an EANCB (equivalent annual net cost to businesses) saving of £1.33m per year.

11.2 The impact on charities or voluntary bodies is unlikely to be significant.

11.3 The impact on the public sector is minimal.

12. Regulating small business

12.1 The legislation applies to small business.

13. Monitoring and review

13.1 The Department for Transport will monitor feedback through statistics and stakeholder discussions.

14. Contact

14.1 Francis Liston at the Department for Transport, telephone number 020 7944 4503 or email: francis.liston@dft.gsi.gov.uk, can answer any queries regarding the instrument.