

EXPLANATORY MEMORANDUM TO
THE GOODS VEHICLES (LICENSING OF OPERATORS) (AMENDMENT) (NO.2)
REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Department for Transport and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

- 2.1 The purpose of this instrument (“SI No.2”) is to correct a drafting error that has been identified within the Goods Vehicles (Licensing of Operators) (Amendment) Regulations 2022¹, (“SI No.1”). SI No. 1 applies a provision to the road passenger transport industry. This is against the policy intention of SI No.1 and the provision would complicate the regulation of the road passenger transport industry. This statutory instrument corrects the drafting error.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

- 3.1 These regulations correct a drafting error in SI No.1, which was laid in draft in Parliament on 24 January 2022. The error is in regulation 7 of SI No.1 and is detailed further in paragraph 6.7.
- 3.2 It is important that SI No.1 (which would come into force after SI No.2) comes into force during March, and preferably mid-March, to ensure certain UK road transport businesses can be licensed and thereby able to legally operate into the European Union, as required by the UK/EU Trade and Co-operation Agreement².
- 3.3 This amending instrument is being laid using the negative procedure. It is being brought forward further to the procedures specified in the European Union (Future Relationship) Act 2020³ (“the 2020 Act”), schedule 5, paragraph 6(3).
- 3.4 It is therefore being laid in draft and is subject to annulment in pursuance of a resolution of either House of Parliament. Further to the 2020 Act schedule 5, paragraph 8(3)(a), Baroness Vere makes a sifting statement in part 2 of the Annex to this Explanatory Memorandum.
- 3.5 SI No.2 is intended to amend an error in SI No.1 before SI No.1 comes into force. To achieve this effect, SI No.2 is intended to be made shortly after SI No. 1 is made but will come into force before SI No.1 comes into force.

¹ SI No.1: <https://www.legislation.gov.uk/ukdsi/2022/9780348231434/introduction>

² The UK-EU Trade and Cooperation Agreement: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/982648/TS_8_2021_UK_EU_EAEC_Trade_and_Cooperation_Agreement.pdf

³ EU Future Relationship Act 2020: <https://www.legislation.gov.uk/ukpga/2020/29/contents>

3.6 Due to the timing, SI No.2 will need to be brought into force less than 21 days after laying. However, SI No.2 is being laid in advance of the parliamentary debates for SI No.1 and will not come into force without or before them.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

6.1 The Goods Vehicles (Licensing of Operators) Act 1995⁴ (“the 1995 Act”) and associated regulations provide the legislative framework for the licensing of road goods transport operators in Great Britain. The Public Passenger Vehicles Act 1981⁵ provides the legislative framework for road passenger transport operators in Great Britain. Operator licensing is a reserved matter in Scotland and Wales.

6.2 Operator licensing is a devolved matter in Northern Ireland. The Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010⁶ (the “2010 NI Act”) provides the legislative framework for the licensing of road goods transport operators in Northern Ireland. The Transport Act (Northern Ireland) 1967⁷ includes provisions relevant to the licensing of road passenger transport operators.

Inclusion of Northern Ireland

6.3 The Minister for Infrastructure in Northern Ireland, Nichola Mallon, has given her consent to the inclusion of Northern Ireland in relation to this statutory instrument.

6.4 Once the correction is in place, the policy objective of ensuring an equivalent legislative regime will continue to apply throughout the United Kingdom.

Retained EU Regulations

6.5 Regulation (EC) 1071/2009⁸, has been retained (as “retained EU law”) under Section 3 of the EU (Withdrawal) Act 2018⁹ and, along with the UK legislation, concerns road transport operator licensing. The regulation was amended immediately following the end of the Implementation Period.

6.6 This instrument reinstates the application of Regulation (EC) 1071/2009 Article 4 via domestic legislation to transport managers of road transport passenger operators.

⁴ The Goods Vehicles (Licensing of Operators) Act 1995
<https://www.legislation.gov.uk/ukpga/1995/23/contents>

⁵ The Public Passenger Vehicles Act 1981: <https://www.legislation.gov.uk/ukpga/1981/14/contents>

⁶ The Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010
<https://www.legislation.gov.uk/nia/2010/2/contents>

⁷ The Transport Act (Northern Ireland) 1967: <https://www.legislation.gov.uk/apni/1967/37/contents>

⁸ (EC) 1071/2009 established common rules across the European Union concerning the conditions that need to be complied with to pursue the occupation of a road transport operator, engaged in the transport of goods or passengers. Retained EUR 1071/2009 <https://www.legislation.gov.uk/eur/2009/1071/contents>

⁹ The EU (Withdrawal) Act 2018: <https://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>

- 6.7 Regulation 7 of the SI No.1 replaced provisions in Article 4 of Regulation (EC) 1071/2009 with amendments to a schedule of the 1995 Act and to a section of the 2010 NI Act. The 1995 Act and 2010 NI Act apply to goods vehicles and not passenger transport vehicles. This instrument restricts the changes made by SI No.1 to goods vehicle operators. Road passenger transport operators therefore continue to be regulated via Article 4 of Regulation (EC) 1071/2009 and references to it in domestic legislation.

7. Policy background

What is being done and why?

- 7.1 Regulation 7 as drafted in SI No.1 applies to all transport managers, who are required for certain road goods vehicle operations and road passenger transport operations. The requirement is designed to support safe and effective operations. It is one of the four key components of operator licensing. In being drafted in this way, Regulation 7 of SI No.1 incorrectly applied certain provisions to road passenger transport operators. This was not the policy intention. This instrument corrects that application.
- 7.2 Once the amendment is applied, SI No.1 will bring into effect changes for goods vehicle operator licensing, including requirements relating to transport managers, required by the UK/EU Trade and Co-operation Agreement. Road passenger transport is governed under a separate title and therefore changes that are being implemented in relation to goods transport, are not applicable to passenger transport.
- 7.3 In order to make the changes, we are planning to use the implementation powers set out in Section 31(1) of the European Union (Future Relationship) Act 2020

Explanations

What did any law do before the changes to be made by this instrument?

- 7.4 Certain provisions regulating transport managers of road passenger transport operators rely on Article 4 of Regulation (EC) 1071/2009. In particular, section 14ZA of the Public Passenger Vehicles Act 1981 relies on Article 4. Likewise, section 6A of the Transport Act (Northern Ireland) 1967 relies on Article 4.

Why is it being changed?

- 7.5 SI No.1 without amendment would amend and omit certain provisions of Article 4, and these changes would apply in respect of all transport managers, i.e. of road passenger and goods vehicles operators, without providing replacement provisions applicable to transport managers of road passenger transport operators.

What will it now do?

- 7.6 This instrument ensures the existing provisions, based on Article 4 of Regulation (EC) 1071/2009 for road passenger transport managers continue to be operative.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union.
- 8.2 This instrument does however relate to the implementation of the Future Relationship Agreement. It ensures an aspect of the implementation of the UK/EU Trade and Co-operation Agreement related to transport managers is not applied incorrectly to road passenger transport operations.

9. Consolidation

9.1 This instrument does not consolidate other regulations.

10. Consultation outcome

10.1 Details of the consultation held in relation to the changes on operator licensing are included in Section 10 of the explanatory memorandum for SI No.1¹⁰.

10.2 Because this instrument is correcting a drafting error in that instrument, thereby returning the legislation to the original policy intent, no further consultation has been carried out.

11. Guidance

11.1 Guidance to provide operators with the information they need to prepare for the change in rules associated with SI No.1 was published on gov.uk in August 2021 and has been subsequently updated. Further updates as necessary will be published on the same page. This guidance can be found here: <https://www.gov.uk/guidance/transport-goods-in-and-out-of-the-uk-using-vans-or-car-and-trailers-from-21-may-2022>

12. Impact

12.1 There is no, or no significant, impact on charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because the Department estimates that the total cost to UK business is less than £5 million in total per year. There was no Impact Assessment prepared for SI No.1 for the same reason.

12.4 Making the correction ensures that there is not an unintended impact on the road passenger transport industry. Along with SI No.1 it leads to no change in the regulation of road passenger transport.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. Along with SI No.1 it leads to no change in the regulation of road passenger transport.

14. Monitoring & review

14.1 This instrument will not be specifically monitored or reviewed. The approach to monitoring and review of SI No.1 is summarised in its explanatory memorandum.

15. Contact

15.1 Morag Rethans at the Department for Transport Telephone: 07342 089 293 or email: morag.rethans@dft.gov.uk can be contacted with any queries regarding the instrument.

¹⁰ Explanatory Memorandum for SI No.1
https://www.legislation.gov.uk/ukdsi/2022/9780348231434/pdfs/ukdsiem_9780348231434_en.pdf

- 15.2 Duncan Price, Deputy Director for Road Freight Regulation, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Vere of Norbiton, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority’s response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument’s effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Sifting statement

- 1.1 The Parliamentary Under Secretary of State for Transport, Baroness Vere of Norbiton has made the following statement regarding use of legislative powers in the European Union (Future Relationship) Act 2020 further to paragraph 8 of schedule 5:

“In my view the Goods Vehicles (Licensing of Operators) (Amendment) (No.2) Regulations 2022 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because: the instrument is making amendments to the Goods Vehicles (Licensing of Operators) (Amendment) Regulations 2022, which are subject to the affirmative procedure and which were laid in draft on 24 January 2022. The technical amendments avoid an unintended complication, which would otherwise arise. The wider policy associated with this amending instrument will be debated as part of the parliamentary stages for that instrument.
- 1.3 This instrument does not amend, repeal or revoke primary legislation or retained direct principal EU legislation. It does not create a power to legislate. It is being laid further to the procedure outlined in paragraph 6(3) of schedule 5 of the European Union (Future Relationship) Act 2020.

2. Equalities

- 2.1 The Parliamentary Under Secretary of State for Transport, Baroness Vere of Norbiton has made the following statement:

“The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006¹¹, or the Equality Act 2010¹² or subordinate legislation made under those Acts.

3. Explanations

- 3.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.

¹¹ The Equality Act 2006: <https://www.legislation.gov.uk/ukpga/2006/3/contents>

¹² The Equality Act 2010: <https://www.legislation.gov.uk/ukpga/2010/15/contents>