

2012 No. 257

ROAD TRAFFIC AND VEHICLES

**The Goods Vehicles (Qualifications of Operators) Regulations
(Northern Ireland) 2012**

Made - - - - - *28th June 2012*

Coming into operation - *1st July 2012*

The Department of the Environment makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a).

The Department of the Environment has been designated (b) for the purposes of section 2(2) of the European Communities Act 1972 in relation to the carriage of goods by road.

In accordance with section 57(11) of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 the Department has consulted such representative organisations as it thinks fit.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012 and shall come into operation on 1st July 2012.

(2) The Interpretation Act (Northern Ireland) 1954(c) shall apply to these Regulations as it applies to an Act of the Assembly.

(3) In these Regulations—

“the 2010 Act” means the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010(d);

“Regulation 1071/2009” means Regulation (EC) No. 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC;

“other relevant person” means in the case of an individual, an employee or agent of the individual and in the case of a company means any officer, agent or employee of the company.

(4) Expressions used in Regulation 1071/2009 have the same meaning when used in these Regulations.

(a) 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51).

(b) S.I. 1996/ 266; to which there are amendments not relevant to these Regulations.

(c) 1954 c.33 (N.I.)

(d) 2010 c.2 (N.I.)

Competent authority

2. The competent authority for the purposes of Regulation 1071/2009 is the Department.

Authorisations to pursue the occupation of road transport operator

3. A standard licence granted under the 2010 Act constitutes an authorisation to pursue the occupation of road transport operator in the capacity of road haulage operator.

Notification of changes to data

4. The period within which a change to data is to be notified under Article 11.5 of Regulation 1071/2009 by an undertaking holding a standard licence granted under the 2010 Act is 28 days commencing on the date of the change.

Good repute

5.—(1) In determining whether an individual is of good repute, the Department may have regard to any matter but shall, in particular, have regard to—

- (a) any convictions or penalties incurred by the individual or any other relevant person; and
- (b) any other information in its possession which appears to the Department to relate to the individual's fitness to hold a licence.

(2) In determining whether a company is of good repute, the Department shall have regard to all the material evidence including, in particular—

- (a) any convictions or penalties incurred by the company, company employees or any other relevant person; and
- (b) any other information in its possession as to the previous conduct of the company or any other relevant person if that conduct appears to the Department to relate to the company's fitness to hold a licence.

(3) For the purposes of these Regulations, any convictions or penalties incurred by any person include —

- (a) any conviction or penalty incurred by that person of an offence under the law of any part of the United Kingdom or any corresponding offence under the law of any country or territory outside the United Kingdom;
- (b) any conviction of that person of a serious offence within the meaning given in regulation 7; and
- (c) any conviction of that person of a road transport offence within the meaning given in regulation 8.

Determination that an individual is not of good repute

6. Without prejudice to the generality of the Department's power under regulation 5 to determine that a person is not of good repute, the Department shall determine that an individual is not of good repute if that individual has—

- (a) been convicted of a serious offence; or
- (b) been convicted of road transport offences.

Serious Offences

7.—(1) A person has a conviction of a "serious offence" if—

- (a) that person has been convicted of any offence under the law of any part of the United Kingdom or under the law of a country or territory outside the United Kingdom; and

- (b) on such conviction there was imposed on that person for that offence a punishment falling within paragraph (2).
- (2) The punishments are—
 - (a) a sentence of imprisonment for a term exceeding three months;
 - (b) a fine exceeding level 4 on the standard scale;
 - (c) a community service order or community payback order requiring a person to perform work for more than 60 hours; and
 - (d) in the case of an offence committed under the law of a country or territory outside the United Kingdom, any punishment corresponding to those mentioned in sub-paragraphs (a) to (c).
- (3) In paragraph (2) —
 - (a) the reference to a sentence of imprisonment includes a reference to any form of custodial sentence or order, other than one imposed under the enactments relating to mental health;
 - (b) “community service order” means an order under Article 13 of the Criminal Justice (Northern Ireland) Order 1996(a); and
 - (c) “community payback order” means an order under section 227A of the Criminal Procedure (Scotland) Act 1995(b).

Road Transport offences

8. “Road transport offence” means—
- (a) an offence under the law of any part of the United Kingdom relating to road transport including, in particular—
 - (i) an offence relating to drivers’ hours of work or rest periods, the weights or dimensions of commercial vehicles, road or vehicle safety or the protection of the environment; and
 - (ii) any other offence concerning professional liability;
 - (b) any corresponding offence under the law of a country or territory outside the United Kingdom.

Further provisions for the purposes of regulations 5 to 8

9. For the purposes of regulations 5 to 8—
- (a) convictions which are spent for the purposes of the Rehabilitation of Offenders (Northern Ireland) Order 1978(c) shall be disregarded; and
 - (b) the Department may also disregard an offence if such time as it thinks appropriate has elapsed since the date of the conviction.

Professional Competence

- 10.—(1) The requirement of professional competence falls to be satisfied by an individual.
- (2) Where an individual is not themselves professionally competent, that person shall be regarded as satisfying the requirement of professional competence if and so long as that person has as the transport manager of the transport undertaking which they carry on an individual who is—
- (a) of good repute; and
 - (b) professionally competent.
- (3) Where a company is required to satisfy that requirement, it does so if and so long as—

(a) S.I. 1996/3160 (N.I. 24)
 (b) 1995 c. 46
 (c) S.I. 1978/1908 (N.I. 27)

- (a) it has in respect of its road transport undertaking a transport manager, and such number of them as the Department may require; and
- (b) that transport manager, is—
 - (i) of good repute, and
 - (ii) professionally competent.

11.—(1) An individual shall be regarded as professionally competent if, and only if—

- (a) that person has demonstrated that they possess the requisite skills by passing a written examination organised by an approved body and is the holder of a certificate to that effect issued by that body; or
- (b) that person is the holder of any other certificate of competence, diploma or other qualification recognised for the purposes of this paragraph by the Department.

(2) The approved body may exempt an individual from certain parts of the examination mentioned in paragraph (3)(a) if the individual is the holder of a certificate of competence, diploma or other qualification which covers those parts and which is recognised for the purposes of this paragraph by the Department.

(3) The written examination mentioned in paragraph (3)(a) may be supplemented by an oral examination organised by the approved body in the form set out in Annex I to Regulation 1071/2009.

(4) In this regulation—

“approved body” mentioned in paragraph (4) means—

- (a) a body approved by the Secretary of State for the purposes of paragraph 13(3) of Schedule 3 to the Goods Vehicles (Licensing of Operators) Act 1995(a); or
 - (b) a body or authority designated for the purposes of Article 8.3 of the 2009 Regulation; and
- “the requisite skills” means knowledge corresponding to the level of training, for either national or international transport operations as the case may be, provided for in Annex I to Regulation 1071/2009 in the subjects there listed.

12. In determining the good repute of a transport manager regulations 5 to 9 shall apply as they apply to an individual with the omission of the words “or any other relevant person”.

13.—(1) The Department may grant a transport manager an exemption from the requirements of section 12(1) of the 2010 Act for the purposes of compliance with the requirement of section 12A(3)(b) of that Act (professional competence)(b).

(2) The Department may grant an exemption under paragraph (1) only if satisfied that the transport manager has continuously managed a road haulage undertaking or a road passenger transport undertaking (within the meaning of Article 9 of the 2009 Regulation) in one or more member States for the period of ten years ending on 4th December 2009.

(3) The Department may grant an exemption under paragraph (1) on an application or without an application being made for it.

(4) The power conferred by paragraph (1) may not be exercised after 4th December 2013.

(5) If an application is made for an exemption under paragraph (1) and the Department refuses the application, the applicant may request a redetermination of the application by the Department.

Issue of notice to transport manager

14.—(1) The Department shall not make a finding that a transport manager is not of good repute unless the Department is satisfied that the transport manager has been served with a notice—

- (a) stating that the question whether the transport manager is of good repute is an issue;

(a) 1995 c. 23

(b) Section 12A(3)(b) is inserted by regulation 17(5) of these Regulations

- (b) setting out the nature of the allegations against the transport manager;
- (c) stating that the transport manager is entitled to make representations under this paragraph within 28 days beginning with the date on which the notice is served on them; and
- (d) stating that the transport manager is entitled to request an inquiry as provided in section 32 of the 2010 Act.

(2) Where a transport manager makes representations under this paragraph, the Department shall consider the representations—

- (a) in considering whether or not to hold an inquiry as provided in section 32 of the 2010 Act; and
- (b) in determining whether the transport manager is of good repute.

(3) The Department must hold an inquiry as provided in section 32 of the 2010 Act if the transport manager requests one under paragraph (1)(d).

Determinations in respect of transport managers

15.—(1) In determining whether a person who is a transport manager is of good repute, the Department must consider whether a finding that the person was no longer of good repute would constitute a disproportionate response.

(2) If the Department determines that the person is no longer of good repute, the Department must order the person to be disqualified (either indefinitely or for such period as the Department thinks fit) from acting as a transport manager.

(3) While a disqualification under paragraph (2) is in force—

- (a) the person may not act as transport manager for any road transport undertaking;
- (b) a certificate issued to the person under Article 8.8 of Regulation 1071/2009 (certificate of professional competence) is not valid.

(4) A person in respect of whom an order has been made under paragraph (2) may appeal to the Upper Tribunal against the order.

(5) The Department may direct that an order under paragraph (2) is not to take effect until the expiry of the time within which an appeal may be made to the Upper Tribunal against the order and, if such an appeal is made, until the appeal has been disposed of.

(6) If the Department refuses to give a direction under paragraph (5), the person in respect of whom the order has been made may apply to the Upper Tribunal for such a direction.

Transport managers: cancellation or variation of disqualification order

16.—(1) Where a disqualification order is made under regulation 15(2) the Department may, subject to paragraph (2), at any time cancel the order or, with the consent of the disqualified person, vary the order.

(2) When a disqualification order is made under regulation 15(2) the Department may specify measures with which the disqualified person must comply before the order can be cancelled or varied.

(3) Measures specified under paragraph (2) may be varied—

- (a) on the application of the disqualified person; or
- (b) by the Department.

(4) Before making a variation under paragraph (3)(b), the Department must serve a notice on the disqualified person—

- (a) stating the Department's intention to vary the measures specified under paragraph (2);
- (b) stating that the person is entitled to make representations under paragraph (5) within 28 days beginning with the date on which the notice is served on the person; and

(c) stating that the person is entitled to request an inquiry as provided in section 32 of the 2010 Act.

(5) Where a person makes representations under this regulation, the Department must consider the representations in deciding whether to vary the measures specified under paragraph (2).

(6) The Department must hold an inquiry as provided in section 32 of the 2010 Act if the disqualified person requests one under paragraph (4)(c).

Amendments to the 2010 Act

17.—(1) The 2010 Act is amended in accordance with paragraphs (2) to (17).

(2) In section 1 (operators' licences) for subsection (4) substitute—

“(4) In subsection (2)(b) and (c), “established”, “haulier” and “international carriage” have the same meaning as in Regulation (EC) No 1072/2009 on common rules for access to the international road haulage market.”.

(3) In section 3 (temporary exemptions), omit subsection (4).

(4) In section 11 (objections to, and representations against, issue of operators' licences)—

(a) in subsection (1)(a), for “section 12” substitute “sections 12A to 12E”;

(b) in subsection (11)—

(i) for “section 12” substitute “sections 12A to 12E”;

(ii) in paragraph (a) for “subsections (3), (5) and (6) of that section” substitute “sections 12A, 12C and 12D”; and

(iii) in paragraph (b), for “subsections (4), (5) and (6) of that section” substitute “sections 12B, 12C and 12D”.

(5) For section 12 substitute—

“Determination of applications for operators' licences

12.—(1) On an application for a standard licence the Department must consider—

(a) whether the requirements of sections 12A and 12C are satisfied; and

(b) if the Department thinks fit, whether the requirement of section 12D is satisfied.

(2) On an application for a restricted licence the Department must consider—

(a) whether the requirements of sections 12B and 12C are satisfied; and

(b) if the Department thinks fit, whether the requirement of section 12D is satisfied.

(3) Subsections (1) and (2) are subject to sections 10 (publication of application) and 47(2) (payment of application fee).

(4) In considering whether any of the requirements of sections 12A to 12D are satisfied, the Department must have regard to any objection duly made under section 11(1)(a) in respect of the application.

(5) If the Department determines that any of the requirements that it has taken into consideration in accordance with subsection (1) or (2) are not satisfied, it must refuse the application.

(6) In any other case the Department must grant the application, unless either of the following provisions applies—

(a) section 13(2) (power to refuse application on environmental grounds);

(b) section 47(2) (power to refuse to proceed until fee is paid).

Requirements for standard licences

12A.—(1) The requirements of this section are set out in subsections (2) and (3).

- (2) The first requirement is that the Department is satisfied that the applicant—
- (a) has an effective and stable establishment in Northern Ireland (as determined in accordance with Article 5 of the 2009 Regulation);
 - (b) is of good repute (as determined in accordance with regulations and Article 6 of the 2009 Regulation);
 - (c) has appropriate financial standing (as determined in accordance with regulations and Article 7 of the 2009 Regulation); and
 - (d) is professionally competent (as determined in accordance with regulations and Article 8 of the 2009 Regulation).
- (3) The second requirement is that the Department is satisfied that the applicant has designated a transport manager in accordance with Article 4 of the 2009 Regulation who—
- (a) is of good repute (as determined in accordance with regulations and Article 6 of the 2009 Regulation);
 - (b) is professionally competent (as determined in accordance with regulations and Article 8 of the 2009 Regulation); and
 - (c) in the case of a transport manager designated under Article 4.2 of the 2009 Regulation—
 - (i) is not prohibited from being so designated by the Department, and
 - (ii) is not designated to act as transport manager for a greater number of road transport undertakings or in respect of a greater number of vehicles than the Department considers appropriate, having regard to the upper limits in Article 4.2(c) of the 2009 Regulation, or such smaller number as the Department considers appropriate in accordance with Article 4.3 of the 2009 Regulation.

Requirements for restricted licences

12B. The requirement of this section is that the applicant is not unfit to hold an operator's licence by reason of—

- (a) any matter of which particulars are required to be given under section 7; or
- (b) any event required to be notified in accordance with section 8(1).

Requirements for standard and restricted licences

12C.—(1) The requirements of this section are that it must be possible (taking into account the Department's powers under section 14(3) to issue a licence in terms that differ from those applied for) to issue a licence in relation to which subsections (2) to (6) will apply.

(2) There must be satisfactory arrangements for securing that the following are complied with in the case of vehicles used under the licence—

- (a) Article 56 of the Road Traffic (Northern Ireland) Order 1981 (drivers' hours); and
- (b) the applicable Community rules, within the meaning of Article 2 of that Order.

(3) There must be satisfactory arrangements for securing that vehicles used under the licence are not overloaded.

(4) There must be satisfactory facilities and arrangements for maintaining the vehicles used under the licence in a fit and serviceable condition.

(5) The licence must specify at least one place in Northern Ireland as an operating centre of the licence-holder, and each place so specified must be available and suitable for use as an operating centre of the licence-holder (disregarding any respect in which it may be unsuitable on environmental grounds).

(6) The capacity of the place specified as an operating centre (if there is only one) or both or all of the places so specified taken together (if there is more than one) must be sufficient to provide an operating centre for all the vehicles used under the licence.

(7) In considering whether the requirements of subsections (2) to (6) are satisfied, the Department may take into account any undertakings given by the applicant (or procured by the applicant to be given) for the purposes of the application, and may assume that those undertakings will be fulfilled.

(8) In considering whether subsection (5) will apply in relation to a licence, the Department may take into account any conditions that could be attached to the licence under section 20(1)(a) (conditions of licences) and may assume that any conditions so attached will not be contravened.

(9) In considering whether subsection (5) or (6) will apply in relation to a licence, the Department may take into account whether any proposed operating centre of the applicant would be used—

- (a) as an operating centre of the holders of other operators' licences as well as an operating centre of the applicant; or
- (b) by the applicant or by other persons for purposes other than keeping vehicles used under the licence.

Further requirement for standard and restricted licences

12D. The requirement of this section is that the provision of the facilities and arrangements for maintaining the vehicles in a fit and serviceable condition is not prejudiced by reason of the applicant's having insufficient financial resources for that purpose.

Professional competence for restricted licence holders

12E. As from such date as may be prescribed, section 12B shall have effect as if for the words "is not unfit" there were substituted "is professionally competent as determined in accordance with section 12A(2)(d) and not otherwise unfit".

(6) In section 14 (issue of operators' licences)—

- (a) in subsection (2)—
 - (i) for "subsection (5) or (6) of section 12" substitute "section 12C or 12D";
 - (ii) for "that section" substitute "section 12";
- (b) in subsection (4), for "section 12(8)" substitute "section 12C(7)".

(7) In section 16 (variation of operators licences), in subsection (6)(c), for "section 12" substitute "sections 12 to 12E".

(8) In section 21 (interim operators' licences)—

- (a) after subsection (7) insert—

“(7A) A request for the issuing of an interim standard licence—

 - (a) shall not be treated as an application for an operator's licence for the purposes of section 9,10,11,13,14(1) to (4), 34 or 35 or Schedule 1, but
 - (b) shall be treated as such an application for the purposes of any other provision of this Act.”;
- (b) in subsection (8), after "interim" insert "restricted".

(9) In section 24 (revocation of standard licences)—

- (a) in subsection (1), for the words from "the licence-holder" to the end, substitute—

“—

 - (a) the licence-holder no longer satisfies the requirements of section 12A(2), or

- (b) the transport manager designated in accordance with Article 4 of the 2009 Regulation no longer satisfies the requirements of section 12A(3).”;
- (b) omit subsection (2);
- (c) after subsection (3), insert—
 - “(3A) A notice under section 26(1) which relates to a direction under subsection (1) may set a time limit, in accordance with Article 13.1 of the 2009 Regulation, for the licence-holder to rectify the situation.
 - (3B) If the licence-holder rectifies the situation within the time limit set under subsection (3A), the Department must not make the direction under subsection (1).”;
- (d) in subsection (4), for “subsection (4)” substitute “subsections (3) to (3B)”.
- (10) In section 25 (disqualification) in subsection (1), for “section 12” substitute “sections 12 to 12E”.
- (11) In section 32 (power of Department to hold inquiries)—
 - (a) in subsection (1), at the end insert “or the 2009 Regulation”;
 - (b) in subsection (2) for “section 23, 24 or 25” substitute “this Act or the 2009 Regulation”;
 - (c) in subsection (3), after “this Act” insert “or the 2009 Regulation”;
 - (d) in subsection (4)—
 - (i) in paragraph (b), after “this Act” insert “or the 2009 Regulation”;
 - (ii) in paragraph (c), after “this Act” insert “or the 2009 Regulation”.
- (12) In section 33 (power of Department to appoint assessors), in subsection (1), after “this Act” insert “or the 2009 Regulation”.
- (13) In section 43 (evidence by certificate), in subsection (2), after paragraph (h) insert—
 - “(ha) that a person is by virtue of an order of the Department disqualified from acting as a transport manager, either indefinitely or for a specified period;”.
- (14) In section 49 (certificates of qualification)—
 - (a) in subsection (2)(b), for the words from “Article 8” to the end substitute “Article 19, 20 or (as the case may be) 21 of the 2009 Regulation.”;
 - (b) in subsection (5), for “the 1996 Council Directive” substitute “the 2009 Regulation”.
- (15) In section 57 (Regulations) , in subsection (9) for “12(12)” substitute “12E”.
- (16) In section 58(1) (general interpretation)—
 - (a) for the definition of “the 1996 Council Directive” substitute—
 - ““the 2009 Regulation” means Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC;”;
 - (b) in the definition of “international transport operations” and “national transport operations” for “the 1996 Council Directive” substitute “the 2009 Regulation”;
 - (c) after the definition of “statutory provision” insert—
 - ““transport manager” has the same meaning as in the 2009 Regulation;”.
- (17) In Schedule 1 (transfer of operating centres) in paragraph 2—
 - (a) in sub-paragraph (3)(c) for “section 12(5)(d)” substitute “section 12C(5)”;
 - (b) in sub-paragraph (4) for “section 12(11)” substitute “section 12(6)”.

Sealed with the Official Seal of the Department of the Environment on 28th June 2012



Iain Greenway
A senior officer of the
Department of the Environment

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the requirements of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 (“the 2010 Act”) with regard to the determination of applications for operator licences and to give effect in Northern Ireland to Regulation (EC) No. 1071/2009 of 21 October 2009 (“Regulation 1071/2009”) which establishes common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repeals Council Directive 96/26/EC.

Regulation 1071/2009 governs admission to, and pursuit of, the occupation of road transport operator. It requires road transport undertakings to have an effective and stable establishment in member states, be of good repute and have appropriate financial standing and the requisite professional competence and it specifies the conditions to be met to satisfy these requirements.

The Regulation provides for the enforcement of its provisions by requiring member states to designate one or more competent authorities to ensure its correct application, requiring undertakings to hold authorisations to engage in the occupation of road transport operator, and establishing the procedure for withdrawing authorisations and declaring transport managers unfit to manage transport activities. It also provides for appeals against adverse decisions, the establishment of national electronic registers of authorised undertakings, the protection of personal data, administrative cooperation between member states, the mutual recognition of certificates and member states to establish penalties for infringements.

Under regulation 2 of these Regulations the Department of the Environment (“the Department”) is designated as the Competent Authority for the purposes of Regulation 1071/2009. Regulation 3 provides that standard operator licences issued under the 2010 Act constitutes authorisations for the purposes of Regulation 1071/2009. Regulation 4 specifies a period of up to 28 days within which licensees are to notify changes in data for the purposes of Article 11.5 of Regulation 1071/2009 and provides for the Article to be enforced as if it was a licence condition.

Regulations 5 to 9 clarify how the Department will determine if a person is of good repute and what determines if a person is not of good repute.

Regulations 10 to 13 set out how an individual satisfies the Department that they are professionally competent.

Regulation 14 sets out the requirement for the Department to issue a notice to a transport manager before it makes a finding that the transport manager is not of good repute or is not professionally competent.

Regulation 15 deals with the determinations in respect of transport managers in regards to being no longer of good repute or professionally competent.

Regulation 16 deals with the cancellation or variation of a disqualification order.

Regulation 17 amends the 2010 Act to include:

- (a) the replacement of section 12 (determination of applications for operators’ licences) with new sections 12 to 12E to reflect the new conditions to apply to standard licence holders by virtue of Regulation 1071/2009;
- (b) the amendment of section 21 (interim licences) to allow interim operators’ licences to constitute operators’ licences for the purposes of the Act;
- (c) the amendment of section 24 (revocation of standard licences) to incorporate the time limits allowed for rectification by Article 13 of the Regulation.

A Regulatory Impact Assessment has been prepared and copies are available from Transport Regulation Unit, Department of the Environment, Bedford House, 16 – 22 Bedford Street, Town Parks, Belfast BT2 7FD or viewed online at <http://www.legislation.gov.uk/nisr>.

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