

**2011 No. 2633**

**ROAD TRAFFIC**

**The Goods Vehicles (Community Licences) Regulations 2011**

*Made* - - - - *1st November 2011*

*Laid before Parliament* *7th November 2011*

*Coming into force* - - *4th December 2011*

The Secretary of State for Transport makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a).

The Secretary of State has been designated(b) for the purposes of section 2(2) in relation to the carriage of passengers and goods by road.

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Goods Vehicles (Community Licences) Regulations 2011 and come into force on 4th December 2011.

(2) These Regulations do not extend to Northern Ireland.

**Revocation**

2. The following are revoked—

- (a) the Goods Vehicles (Community Authorisations) Regulations 1992(c); and
- (b) the Goods Vehicles (Community Authorisations) (Modification of the Road Traffic (Foreign Vehicles) Act 1972) Regulations 2002(d).

**Purpose and interpretation**

3.—(1) These Regulations implement Regulation 1072/2009.

(2) In these Regulations—

“the 1995 Act” means the Goods Vehicles (Licensing of Operators) Act 1995(e);

“the 1995 Regulations” means the Goods Vehicles (Licensing of Operators) Regulations 1995(f);

“Community authorisation” means an authorisation issued under Article 3 of Council Regulation 881/92;

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(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) S.I. 1992/3077.

(d) S.I. 2002/1415.

(e) 1995 c.23.

(f) S.I. 1995/2869, as amended by S.I. 1996/2186.

“Community licence” means a licence issued under Article 4 of Regulation 1072/2009;  
“Council Regulation 881/92” means Council Regulation (EEC) No 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community(a);  
“driver attestation” means an attestation issued under Article 5 of Regulation 1072/2009;  
“Regulation 1071/2009” means Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the occupation of road transport operator(b);  
“Regulation 1072/2009” means Regulation (EC) No 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(c);  
“standard operator’s licence” means a standard licence within the meaning of section 3 of the 1995 Act,

and subject to this, expressions which are also used in Regulation 1072/2009 have the same meaning which they bear in that Regulation.

### **Use of goods vehicle without Community licence**

4. A person who uses a vehicle in Great Britain in contravention of Article 3 of Regulation 1072/2009 (requirement to possess a Community licence) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **Competent authorities**

5.—(1) Subject to paragraphs (2) and (3), where a person holds or has applied for a standard operator’s licence that authorises international transport operations, the competent authority for the purposes of Regulation 1072/2009 and of these Regulations is—

- (a) for a Community licence, a traffic commissioner appointed under the Public Passenger Vehicles Act 1981(d); and
- (b) for a driver attestation, the Secretary of State.

(2) Paragraph (3) has effect until the coming into force of section 2 of the Local Transport Act 2008(e) in relation to a person who holds or has applied for a standard licence under the 1995 Act.

(3) A traffic commissioner for the purposes of paragraph (1)(a) is the traffic commissioner for the traffic area in which the licence was granted, or (as the case may be) the traffic commissioner who falls to consider the application for the standard operator’s licence.

### **Issue of a Community licence and driver attestation**

6.—(1) Subject to regulation 13(1) (supply of information), a person is entitled to be issued by the competent authority with a Community licence if the person holds a standard operator’s licence that authorises international transport operations(f).

(2) From 4th December 2011 a Community authorisation is treated as a Community licence(g).

(3) From 4th December 2011 an attestation issued under Article 3 of Council Regulation 881/92 is treated as a driver attestation.

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(a) OJ No L 95, 09.04.92, p1.

(b) OJ No L 300, 14.11.09, p51.

(c) OJ No L 300, 14.11.09, p72.

(d) 1981 c.14. Section 4 was amended by the Transport Act 1985 (c.67) section 3(2) and by the Local Transport Act 2008 (c.26) section 2(1) to (6). Section 82(1) was amended by the Local Transport Act 2008, section 2(7) and by the Transport Act 1985, section 3(5) and Schedule 2, Part II, paragraphs (1) and (20).

(e) 2008 c.26.

(f) See section 3(5) of the Goods Vehicles (Licensing of Operator’s) Act 1995 (c.23).

(g) See the second paragraph of Article 4(2) of Regulation 1072/2009.

## **Withdrawal of a Community licence and driver attestation**

7.—(1) Where the holder of a Community licence is guilty of an infringement in Great Britain of Community road transport legislation which may lead to the loss of good repute in accordance with Article 6(1) and (2) of Regulation 1071/2009(a), the competent authority may impose the following penalties—

- (a) the temporary or permanent withdrawal of some or all of the certified true copies of the Community licence;
- (b) the temporary or permanent withdrawal of the Community licence.

(2) Where the holder of a Community licence is guilty of an infringement involving any misuse of driver attestations within the meaning of Article 12(2) of Regulation 1072/2009, the competent authority may impose the following penalties—

- (a) the temporary or permanent withdrawal of some or all of the certified true copies of the driver attestation;
- (b) the temporary or permanent withdrawal of the driver attestation.

## **Rights of appeal**

8.—(1) A person who—

- (a) applies for a Community licence; and
- (b) wishes to dispute a decision of a traffic commissioner to refuse to issue the person with such a licence,

may appeal against that decision.

(2) A person who—

- (a) is the holder of a Community licence; and
- (b) wishes to dispute a decision of a traffic commissioner to withdraw it or any certified true copies of it,

may appeal against that decision.

(3) The right of appeal conferred by each of paragraphs (1) and (2) is a right of appeal to the Upper Tribunal(b).

9.—(1) A person who—

- (a) applies for a driver attestation; and
- (b) wishes to dispute a decision of the Secretary of State to refuse to issue the person with a driver attestation,

may appeal against that decision.

(2) A person who—

- (a) is the holder of a driver attestation; and
- (b) wishes to dispute a decision of the Secretary of State to withdraw it or any certified true copies of it,

may appeal against that decision.

(3) The right of appeal conferred by each of paragraphs (1) and (2) is a right of appeal to a traffic commissioner.

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(a) Article 6(1) of Regulation 1071/2009 states that, subject to paragraph (2), Member States are to determine the conditions to be met to satisfy the good repute provisions of Article 3(1)(b). This is done in paragraphs 1 to 5 of Schedule 3 to the Goods Vehicles (Licensing of Operators) Act 1995 (c.23).

(b) See the Tribunal Procedure (Upper Tribunal) Rules 2008 (S.I. 2008/2698). Relevant amending instruments are S.I. 2009/274, 2009/1975, 2010/43, 2010/747 and the Constitutional Reform Act 2005 (c.4).

**10.**—(1) An appeal under regulation 9 must be brought within the period of 28 days, beginning with the day on which the aggrieved person (“the appellant”) was informed of the decision of the Secretary of State to refuse to issue that person with a driver attestation or to withdraw it or any certified true copies of it.

(2) A traffic commissioner must—

- (a) consider any written representations made and any evidence provided when the appeal is brought;
- (b) inform the appellant of the outcome of the appeal within the period of 56 days, beginning with the day on which the appeal was brought; and
- (c) provide reasons for the decision (“the determination”).

(3) Without prejudice to the right of any person to make an application for judicial review—

- (a) a determination by a traffic commissioner on an appeal brought under regulation 9 is binding on all parties affected by that determination; and
- (b) a traffic commissioner may give such directions as the traffic commissioner considers appropriate to give effect to the determination.

### **Authorised inspecting officers**

**11.** The following are authorised inspecting officers for the purposes of Regulation 1072/2009—

- (a) police constables in uniform;
- (b) examiners appointed under section 66A(1) of the Road Traffic Act 1988(a).

### **Supply of information**

**12.**—(1) The competent authority may refuse to issue a Community licence or driver attestation to an applicant if the applicant fails to supply any information that the competent authority may reasonably request for the purpose of verifying whether the applicant satisfies the conditions laid down in Article 4(1) or Article 5(1) of Regulation 1072/2009 as the case may be.

(2) The holder of a Community licence or driver attestation must supply such information as the competent authority may reasonably require from time to time to enable the authority to decide whether the holder is entitled to retain the licence or attestation.

(3) A person who fails to supply any information required under paragraph (2) may have the Community licence or driver attestation, and any certified true copies of it, withdrawn by the competent authority.

### **Power to stop**

**13.**—(1) Paragraph (2) applies if it appears to a stopping officer that a vehicle is being used in circumstances such that a Community licence could be required.

(2) The stopping officer may direct the driver to stop the vehicle so that an authorised inspecting officer can conduct checks as to whether an offence has been committed under regulation 4.

(3) In this regulation “stopping officer” means an officer appointed under section 66B of the Road Traffic Act 1988(b).

### **Death, bankruptcy etc of holder of Community licence**

**14.**—(1) Where a person is treated as the holder of a standard operator’s licence by virtue of a direction under regulation 31 of the 1995 Regulations, that person is also to be treated as the

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(a) 1988 c.52; section 66A(1) was inserted by section 9 of the Road Traffic Act 1991 (c.40).

(b) 1988 c.52; section 66B was inserted by S.I. 2011/ 996.

holder of any Community licence held by the actual holder of that operator's licence, for the same period as is specified in that direction.

(2) For the purposes of paragraph (1), "actual holder" has the same meaning as in regulation 31(1) of the 1995 Regulations.

### **Bodies corporate**

**15.—**(1) Where an offence under these Regulations has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other officer of the body corporate or any person who was purporting to act in any such capacity, both that person and the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with that member's functions of management of that body corporate as if that member were a director of the body corporate.

(3) Where an offence under these Regulations has been committed by a Scottish partnership and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is guilty of the offence and is liable to be proceeded against and punished accordingly.

### **Amendment of the Road Traffic (Foreign Vehicles) Act 1972**

**16.—**(1) The Road Traffic (Foreign Vehicles) Act 1972(a) is amended as follows.

(2) In Schedule 1 (provisions conferring functions on examiners)—

- (a) omit the entry relating to Article 5(4) of Council Regulation (EEC) No 881/92; and
- (b) after the entry relating to regulation 16 of the Road Transport (International Passenger Services) Regulations 1984(b) insert—

"Article 4(6) of Regulation (EC) No 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. To require the presentation of a certified true copy of a Community licence, which is required to be kept on board certain goods vehicles."

(3) In Schedule 2 (provisions relating to vehicles and their drivers), for the entry relating to regulations 3 and 7 of the Goods Vehicles (Community Authorisations) Regulations 1992(c) substitute—

"Regulation 4 of the Goods Vehicles (Community Licences) Regulations 2011. To impose a penalty for the contravention of the requirement to possess a Community licence when using a goods vehicle."

### **Review**

**17.—**(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

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(a) 1972 c.27.  
(b) S.I. 1984/748.  
(c) S.I. 1992/3077.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how Regulation 1072/2009 (which is implemented by means of these Regulations) is implemented in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Signed by authority of the Secretary of State

1st November 2011

*Mike Penning*  
Parliamentary Under Secretary of State  
Department for Transport

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations revoke and replace the Regulations specified in *regulation 2*. They give effect to aspects of Regulation (EC) No 1072/2009 of 21 October 2009 (“Regulation 1072/2009”), which makes provision for a Community licence allowing goods vehicles access to the market in the carriage of goods by road between Member States and for a driver attestation where the driver is a third country national.

Regulation 1072/2009, which is directly applicable in Member States, recasts existing European Regulations and governs the conditions for the issue and use of Community licences and driver attestations. It prescribes the form of the Community licence (Article 4(4) and Annexes I and II) and driver attestation (Article 5(3) and Annexes I and III), and the period of validity for each (Articles 4(2) and 5(7) respectively).

*Regulation 6* confers entitlement to a Community licence on the basis of the relevant Great Britain licence. It also provides that existing Community authorisations and driver attestations which meet certain conditions are to be treated as Community licences and driver attestations respectively for the purposes of Regulation 1072/2009 and of these Regulations. The competent authorities for the purposes of these Regulations and Regulation 1072/2009 are the Secretary of State and traffic commissioners, as provided for in *regulation 5*.

These Regulations establish an offence of using a goods vehicle without a Community licence, punishable on summary conviction by a fine up to level 4 on the standard scale (*regulation 4*). They provide stopping officers with a power to stop for the purpose of checks in relation to *regulation 4* (*regulation 13*); and authorised inspecting officers are designated for the purpose of carrying out any necessary inspections (*regulation 11*). Provision is also made for administrative penalties in certain circumstances – in particular the refusal to issue and the withdrawal of documents (*regulation 7*). The Regulations confer rights of appeal against administrative penalties (*regulations 8 to 10*).

*Regulation 12* requires the holder of a Community licence or driver attestation to supply information in certain circumstances, and provides that such documents may be withdrawn in the event of failure to comply.

Provision is made for the automatic transfer of a Community licence following the death, bankruptcy or incapacity of the holder (*regulation 14*) and for offences which may be committed by a body corporate (*regulation 15*). In addition provision is made for the amendment of the Road Traffic (Foreign Vehicles) Act 1972, so that an authorised inspecting officer may prohibit the driving of a vehicle on the road in certain circumstances (*regulation 16*).

*Regulation 17* requires the Secretary of State to review the operation and effect of these Regulations, and to publish a report within 5 years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or amended. A further instrument would be needed to revoke or to amend them.

A full impact assessment of the effect that Regulation 1072/2009 (along with two other related EU Road Transport Regulations) will have on the costs of business and the voluntary sector, and a transposition note for Regulation 1072/2009, are available from the Operator Licensing and Roadworthiness Division at the Department for Transport, Great Minster House, 33 Horseferry Road, London, SW1P 4DR. They are published with the Explanatory Memorandum alongside this instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk). Regulation 1072/2009 can be viewed on the EUR-Lex website at [www.eur-lex.europa.eu](http://www.eur-lex.europa.eu).

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