

GOODS VEHICLES (LICENSING OF OPERATORS) ACT (NORTHERN IRELAND) 2010

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 which received Royal Assent on 22 January 2010. They have been prepared by the Department of the Environment in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The Notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. Under the Transport Act (Northern Ireland) 1967, the Department is responsible for the licensing of operators, their drivers and vehicles that carry other people's goods by road for reward. It also determines the roadworthiness of vehicles and checks the repute of drivers and, together with the Police Service of Northern Ireland, is responsible for freight regulation enforcement.
4. The need for change to the licensing system in Northern Ireland has been raised by the freight industry, public representatives and consumer organisations, who are dissatisfied with the way in which freight services are delivered under existing policy and legislation.
5. There is considerable concern with regard to the absence in Northern Ireland of "own account" licensing. Own account operators (those operators who carry their own goods in the course of their business or trade), who make up around three quarters of the industry, are not required to be licensed. In Great Britain, all operators must be licensed.
6. Northern Ireland has much weaker freight licensing enforcement powers. This issue, combined with the fact that only one sector of the industry is regulated, has given industry representatives and enforcement teams both in Northern Ireland and Great Britain cause for concern.

7. Goods vehicles make a significant contribution to the number of people killed or seriously injured in Northern Ireland. There is evidence of illegal operators undercutting the legitimate freight industry, thus threatening the viability of many within the industry and contributing to the poor road safety record.
8. There is presently no sanction within road freight legislation against operators who do not pay attention to the environmental standards of the operating centre. Operating centres have the potential to affect a considerable number of households in Northern Ireland. Present licensing arrangements fall short of offering any effective environmental safeguards.
9. The aim of the Act is to address these concerns and weaknesses and to have, in one dedicated statute, the primary powers to deal with all matters relating to the regulation of road freight operators in Northern Ireland. It will bring the system largely (but not wholly) into line with the system currently in place in Great Britain.

CONSULTATION

10. The Department has reviewed the road freight operator licensing system in Northern Ireland on three occasions.
11. In 1991, the Department commissioned a review of the road haulage industry in light of the increasing disparity in the legislation, policy and practice in the licensing of road freight operators between Great Britain and Northern Ireland. A report on the review made a series of recommendations which were in line with the system in operation in Great Britain at the time. Due to funding difficulties, the recommendations were not implemented.
12. In 1998, following representations from industry associations, the Department published a consultation paper containing proposals to bring the licensing system into line with the system operating in Great Britain. It was issued to over 2000 consultees including the Freight Transport Association, the Road Haulage Association, other business associations, employer associations and licensed haulage operators as well as to district councils and other interested parties. There were 34 replies and most of the substantive responses supported the proposals. Of the few objections that were received, one of the most common was that the annual road freight vehicle licence should be renewed every five years in line with the operator's licence. However, since this is a vehicle excise revenue issue, and an "excepted matter" under the Northern Ireland Act 1998, it is not within the legislative competence of the Assembly and, therefore, outside the scope of the review.
13. Following this consultation, the then Minister concluded that the proposals should be left to be progressed by the new Northern Ireland Assembly in due course. Due to resource and other competing priorities, an opportunity to take it forward did not arise.

14. In 2003, the Department revisited and updated the 1998 review and issued a new consultation document. It included developments since the previous exercise including a new power for the impounding of vehicles and their contents that came into operation in Great Britain in 2002, and the Human Rights Act, that came into operation in 2000 and required new appeals procedures to comply with the European Convention on Human Rights. This document issued to a wide range of bodies representing road safety, transport and motoring interests, trade associations and employee representative bodies, insurance industry representatives, courts and legislative interests, government departments, local authorities as well as political parties and elected representatives.
15. Nineteen responses were received of which four provided detailed comments, eleven made a few comments and four offered no comments. The response was generally positive, with the major concerns being increased costs for legitimate operators, significant constraints on existing operators' ability to compete in a highly competitive market and the need for actual enforcement of the regime.

OPTIONS CONSIDERED

16. Policy options were considered in the review of the system in 1991 and in each of the two consultation exercises in 1998 and 2003. The way forward has been determined taking into account the licensing procedures that have existed in Great Britain and that have evolved further over the last 30 years including the extension of the licensing requirement to the own account sector and the application of environmental issues.
17. Each of the consultation exercises recognised that change was necessary and supported a general alignment with the system in operation in Great Britain. Consultation revealed that there was a need for some local variation, for example, with regard to the appointment of a traffic commissioner for Northern Ireland. This was also considered to be a much wider issue as policy options for other operator licensing areas (taxis and public transport) were being examined. Therefore, the Department decided that an option that would largely replicate the Great Britain system, but allow for local variations, would be the most suitable.

OVERVIEW

18. The Act contains the primary powers needed to deal with all matters relating to the regulation of road freight operators in Northern Ireland. It covers the requirement to hold an operators' licence, the application and determination process, the ability to apply conditions to and vary a licence along with powers for the revocation, suspension and curtailment of licences. It provides for the regulation of operating centres, the review of decisions including appeals and enforcement and penalties. The Act has 61 sections and 4 Schedules. A commentary on the provisions follows below. Comments are not given where the wording is self-explanatory.

COMMENTARY ON SECTIONS

Sections 1 to 3 contain the requirement to hold an operators' licence and sets out the different types of operators' licences. It will be an offence to operate without a licence although there is also provision for exemption from holding a licence.

Under Section 4 any vehicle that is to be used under a licence must be in the lawful possession of the owner, registered under the Vehicle Excise and Registration Act 1994 (c.22) and kept in an operating centre in Northern Ireland. Section 5 provides for the Department to specify the maximum number of vehicles that can be used in a licence. That number can be greater than those vehicles actually identified under a licence. The difference between the number of vehicles identified and the maximum authorised is commonly known as "the margin". It will be an offence to exceed the maximum.

Section 6 provides for the operating centre to be specified in the licence. Authorised vehicles should be kept at the operating centre specified on the licence and it will be an offence to do otherwise.

Sections 7 to 11 deal with the application process for licences. They provide for the information that an applicant will have to furnish in the application and the requirement for the applicant to publish a notice of the application in a newspaper. They also deal with the process of making an objection to, and representations against, the issue of a licence.

Sections 12 to 15 set out the process for determining applications and the issue of a licence. Depending on the type of licence applied for, the Department shall consider certain requirements including the good repute, financial standing and professional competence of the applicant [the details of which will be outlined in subsequent regulations] and determine whether the applicant satisfies the particular requirements for the type of licence. Any objections or representations against the application will be considered as part of the process. The Department may issue a licence in terms different to those applied for.

Sections 16 to 19 provide for the variation of licences. They set out the types of variations that can be considered along with the application process including the publication of notices and the process for making objections and representations.

Under Section 20, the Department has the power to attach conditions to a new licence. The conditions may, in particular, relate to public safety in or around operating centres or may require the licence holder to inform the Department of any event that may affect the licence. They may also relate to the use of an operating centre and seek to prevent or minimise any adverse effects on the environmental conditions in the area of the centre. The Department will be able to vary or remove a condition as part of a variation exercise under section 16. It will be an offence to contravene any condition attached to a licence.

Section 21 provides for the issue of an interim licence, if requested at the time of application, which will remain in force while the application is being determined. Similarly, under section 22 the Department may make an interim variation to an existing licence that will remain in place while the application is being determined.

Sections 23 to 26 provide for the revocation, suspension and curtailment of operators' licences and disqualification from holding or obtaining a licence. The Department can decide to revoke, suspend or curtail a licence for any reasonable cause and other specified grounds as outlined. Under section 24, a standard licence will be revoked if the holder is no longer of good repute, appropriate financial standing or professionally competent. Under section 25, the Department may disqualify a person from holding or obtaining an operator's licence and it will be an offence to apply or obtain a licence while disqualified. Such decisions will be subject to inquiry, if the licence holder requests, and the revocation, suspension, curtailment or disqualification will not take effect if and while the licence holder appeals to the Upper Tribunal.

Sections 27 to 29 deal with the review of operating centres. The Department will review, on a regular 5-year basis, the place specified in the licence to determine its continued suitability for use as an operating centre. It will have the power to either remove the operating centre from the licence or to attach conditions to the licence.

Under section 30 and Schedule 1, the Department will be able to consider an application that involves the transfer of an operating centre. This may be in the form of an application for a new licence, or for the variation of an existing licence where the proposed operating centre is already specified in another operator's licence.

Under section 31, the Department will have to consider environmental matters when making determinations on applications for new licences or the variation of existing licences and also when carrying out reviews of operating centres. Details of the environmental matters that it will consider will be outlined in regulations.

Section 32 provides the Department with the power to hold inquiries when it thinks fit in carrying out any of its functions under the Act. Section 33 allows the Department to appoint and pay for an assessor to assist in considering any financial questions that arise in carrying out its functions.

Sections 34 and 35 set out the arrangements for the reviews of, and appeals against decisions on operators' licences. Under section 34, the Department can review and subsequently vary or revoke a decision it made in relation to an application. Under section 35, an applicant may appeal to the Upper Tribunal against a decision of the Department, as can a person who had made an objection to an application.

Under section 36 it will be an offence to forge, alter or use a range of documents and plates relating to operator licensing. It will also be an offence under section 37 to knowingly make a false statement or produce false or misleading material in relation to an application for an operators' licence.

Sections 38 to 45 set out the provisions on the enforcement of operator licensing. The Department will have power to enter and inspect certain premises that are being used in connection with the carriage of goods by road and to seize certain documents and to obtain certain information. It will be an offence to obstruct an authorised officer in the exercise of functions under the Act. Section 44 and Schedule 2 to the Act provides for the power to detain a vehicle that is being used without an operator's licence. They provide for the immobilisation of the vehicle and its contents along with the subsequent return or disposal of

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both. Regulations may provide for the procedure for dealing with disputes about the return or disposal of the contents of a vehicle. It will be an offence to make a false or misleading declaration to secure the return of seized property.

Sections 46 to 51 contain a number of miscellaneous provisions relating to operator licensing. There will be controls placed on the disclosure of information obtained under the Act. The Department will be able to charge fees for the processing of operator's licences and with the approval of the Department of Finance and Personnel pay grants to persons or bodies as it considers appropriate in connection with any provision or purposes of the Act.

Sections 52 to 55 contain provision for the application of the Act in certain special cases including its application to holding companies and partnerships along with the Crown and to roads within Belfast Harbour and other harbours.

Sections 56 to 61 contain a number of supplementary provisions including powers to make regulations.

HANSARD REPORTS

19. The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly.

STAGE	DATE
Introduction of Bill to Environment Committee	24 January 2008
Departmental briefing to Committee	7 February 2008
Briefing to Committee by Freight Transport Association	3 April 2008
Briefing to Committee by Road Haulage Association and Departmental officials	24 April 2008
First Stage – Introduction of Bill to the Assembly	12 May 2008
Second Stage - Debate	20 May 2008
Committee Stage – Evidence from Departmental officials	5 June 2008
Committee Stage – Evidence from Ulster Farmers Union	25 September 2008

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Committee Stage – Horticultural Forum for NI, DVA enforcement officials and DOE Planning Service officials	2 October 2008
Committee Stage – Evidence from Traffic Commissioner	9 October 2008
Committee Stage – Evidence from Departmental officials	16 October 2008
Committee Stage – Clause by clause consideration	6 November 2008
Committee Stage – Clause by clause consideration	11 November 2008
Committee Stage – Clause by clause consideration	13 November 2008
Committee Stage – Clause by clause consideration	20 November 2008
Committee Stage – Clause by clause consideration	2 December 2008
Consideration Stage in the Assembly	10 November 2009
Further Consideration Stage	23 November 2009
Final Stage	1 December 2009
Royal Assent	22 January 2010

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