



STATUTORY INSTRUMENTS.

S.I. No. 265 of 2018



EUROPEAN UNION (OCCUPATION OF ROAD TRANSPORT
OPERATOR) REGULATIONS 2018

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I, SHANE ROSS, Minister for Transport, Tourism and Sport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) for the purposes of giving full effect to Regulation (EC) No. 1071/2009 of the European Parliament and of the Council of 21 October 2009¹, and Commission Regulation (EU) 2016/403 of 18 March 2016², hereby make the following regulations:

1. These Regulations may be cited as the European Union (Occupation of Road Transport Operator) Regulations 2018.

2. (1) In these Regulations—

“Act of 2011” means Road Transport Act 2011 (No. 31 of 2011);

“Commission Regulation” means Commission Regulation (EU) 2016/403 of 18 March 2016²;

“company” means a company formed and registered under the Companies Act 2014 (No. 38 of 2014) or an existing company within the meaning of that Act;

“EU Regulation” means Regulation (EC) No. 1071/2009 of the European Parliament and of the Council of 21 October 2009¹;

“holder of a specified position” means, where an operator is—

- (a) an individual, his or her transport manager,
- (b) a company, a director of the company, its secretary or transport manager,
- (c) a partnership, a partner or the transport manager of the partnership, or
- (d) a co-operative, its secretary, transport manager or any member of its committee of management;

“Minister” means Minister for Transport, Tourism and Sport;

“operator” means, as the case may be, the holder of, or an applicant for, an operator’s licence;

¹OJ No. L 300, 14.11.2009, p.51

²OJ No. L 74, 19.3.2016, p.8

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 24th July, 2018.

“operator’s licence” has the meaning assigned to it by section 2 of the Road Traffic and Transport Act 2006 (No. 28 of 2006);

“relevant person” means, in respect of a road transport business (within the meaning of section 1 of the Act of 2011), the operator of the business, a person who is the holder of a specified position in the business, a shadow operator (within the meaning of section 1 of the Act of 2011) in the business or a driver driving a road transport vehicle for that business.

(2) A word or expression which is used in these Regulations and is also used in the EU Regulation has, unless the contrary intention appears, the same meaning in these Regulations as it has in the EU Regulation.

3. The Minister is the competent authority for the purposes of Article 10 of the EU Regulation.

4. An operator’s licence constitutes an authorisation to pursue the occupation of road transport operator for the purposes of the EU Regulation.

5. In determining whether an operator or a relevant person has satisfied or continues to satisfy the requirement of good repute the Minister shall consider the following:

- (a) whether or not the operator or a relevant person has incurred a penalty or been convicted of—
 - (i) an offence referred to in section 2(1) of the Act of 2011, or
 - (ii) within the previous 5 years, an offence specified in Schedule 1;
- (b) any conduct by the operator or a relevant person which calls into question the operator’s suitability to hold an operator’s licence or the transport manager’s suitability to hold the position of transport manager;
- (c) whether or not the operator or a relevant person has been convicted of or incurred a penalty for a serious infringement of Community rules relating to the matters referred to in part (b) of the third subparagraph of Article 6(1) of the EU Regulation or Annex I to the Commission Regulation during the previous 5 years in one or more Member States;
- (d) whether the operator has contravened any terms and conditions attached to the operator’s licence, or to any operator’s licence previously held by the operator;
- (e) in the case of a person pursuing the occupation of road passenger transport operator, the need to ensure the safety and welfare of passengers in large public service vehicles (within the meaning of the Road Traffic Act 1961 (No. 24 of 1961));

- (f) the need to ensure the safety and welfare of other road users;
- (g) any representations received from the operator or relevant person;
- (h) any other information which the Minister considers relevant to—
 - (i) the operator's fitness to hold an operator's licence, or
 - (ii) the transport manager's fitness to manage the activities of an undertaking pursuing the occupation of road transport operator.

6. A relevant person shall notify the Minister in writing of the fact of any conviction or a serious infringement, as categorised in Annex I to the Commission Regulation, against any relevant person in the road transport business concerned under the instruments listed in Regulation 5—

- (a) where the operator concerned is making an application for an operator's licence, at the time of making an application, or
- (b) where the operator concerned is the holder of an operator's licence, within 3 months of the making of these Regulations, of the expiry of the time allowed for appealing such conviction or of the determination or withdrawal of the appeal of such conviction, whichever is the latest.

7. An operator who has lost good repute in accordance with Article 6 of the EU Regulation shall have his or her operator's licence withdrawn by the Minister. In the case of an operator which is a company which has lost good repute, the secretary and directors of the company shall each be considered to have lost good repute in accordance with Article 6 of the EU Regulation.

8. (1) Where an operator or in the case of a company, the secretary and directors have lost good repute, the Minister shall not consider an application for an operator's licence from him or her until a period of two years has passed.

(2) In considering a licence application from an operator or in the case of a company, the secretary and directors who have lost good repute, the Minister shall have regard to the successful completion of any training courses, which the Minister considers relevant, that have been undertaken by them.

9. (1) Before making a declaration under Article 14(1) of the EU Regulation, the Minister shall afford the transport manager concerned an opportunity within such period as the Minister allows, being not less than 21 days after the transport manager is notified, to make representations to the Minister.

(2) A declaration referred to in paragraph (1) shall be in writing and served on the transport manager concerned personally or by post at his or her place of work or principal residence.

10. Where a transport manager has been declared unfit under Article 14(1) of the EU Regulation to manage the transport activities of an undertaking the

transport manager may, within 21 days of the declaration, appeal the decision to the judge of the District Court, within whose District the transport manager carries on his or her activities as a transport manager. The judge on hearing the appeal may make such order as he or she sees fit.

11. A transport manager who has been declared unfit under Article 14(1) of the EU Regulation to manage the activities of an undertaking and continues to manage the activities of that undertaking, or any other undertaking, after having been so declared commits an offence and is liable—

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €50,000.

12. Where a transport manager who has been declared unfit under Article 14(1) of the EU Regulation to manage the transport activities of an undertaking the Minister shall not consider the Transport Manager to be fit until a period of one year has passed, that during this period there are no compelling grounds for doubting the good repute of the transport manager and that he or she has undertaken such rehabilitation measures, such as training or re-examination, specified by the Minister.

13. The Minister may authorise a person—

- (a) to manage the provision of training for the transport manager's certificate of professional competence, to prepare candidates for examinations and provide transport managers with continuous training to update their knowledge, or
- (b) to organise and certify examinations for a transport manager certificate of professional competence.

14. (1) An operator shall keep the documents listed in Schedule 2 at the business address of the operator.

(2) An operator who fails to comply with this Regulation commits an offence and is liable on summary conviction to a class A fine.

15. Proceedings for an offence under these Regulations may be brought and prosecuted summarily by the Minister or the Road Safety Authority.

16. A transport officer (within the meaning of section 16 of the Act of 2011) may, for the purposes of the EU Regulation, exercise the powers of a transport officer under section 16 of that Act and shall be responsible for conducting a check at the premises of the undertaking concerned, if required to do so by the Minister, under Article 5 and 6(2) (a) of the EU Regulation.

17. The European Union (Occupation of Road Transport Operator) Regulations 2017 (S.I. No. 89 of 2017) are revoked.

SCHEDULE 1

Regulation 5

An offence under:

- (a) the Companies Act 2014 relating to a company established for the purposes of pursuing the occupation of road transport operator;
- (b) the Road Traffic Acts 1961 to 2016;
- (c) Part 2 of the Public Transport Regulation Act 2009 (No. 37 of 2009);
- (d) the Road Transport Act 1933 (No. 8 of 1933) and any Act or section of any Act construed together with it;
- (e) the Dangerous Substances Acts 1972 and 1979;
- (f) the Carriage of Dangerous Goods by Road Act 1998 (No. 43 of 1998);
- (g) the Animal Health and Welfare Act 2013 (No. 15 of 2013);
- (h) the Customs and Excise (Miscellaneous Provisions) Act 1988 (No. 10 of 1988);
- (i) section 3 of the Customs Act 1956 (No. 7 of 1956);
- (j) section 14 or 15 of the Customs Act 2015 (No. 18 of 2015);
- (k) section 10 of the International Carriage of Perishable Foodstuffs Act 1987 (No. 20 of 1987);
- (l) the International Carriage of Goods by Road Act 1990 (No. 13 of 1990);
- (m) section 102 of the Finance Act 1999 (No. 2 of 1999);
- (n) the Agricultural Acts 1931 to 1980 relating to the carriage of animals, meat or agricultural produce;
- (o) the Agricultural Produce (Fresh Meat) Acts 1930 to 1988;
- (p) the following Acts, in so far as they relate to the occupation of road transport operator:
 - (i) the Minimum Notice and Terms of Employment Acts 1973 to 2005;
 - (ii) section 77 of the Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005);
 - (iii) the Protection of Young Persons (Employment) Act 1996 (No. 16 of 1996);
 - (iv) the Unfair Dismissals Acts 1977 to 2007;

- (v) the Organisation of Working Time Act 1997 (No. 20 of 1997);
- (vi) the Terms of Employment Acts 1994 to 2012
- (vii) the Employment Permits Acts 2003 to 2014;
- (viii) the Payment of Wages Act 1991 (No. 25 of 1991);
- (q) the Social Welfare Acts;
- (r) the Competition Acts 2002 to 2014;
- (s) the Bankruptcy Acts 1988 to 2011;
- (t) Part 3 of the Consumer Protection Act 2007 (No. 19 of 2007);
- (u) the Sale of Goods and Supply of Services Act 1980 (No. 16 of 1980);
- (v) the Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012 (No. 16 of 2012);
- (w) the Taxi Regulation Act 2013 (No. 37 of 2013);
- (x) any regulation made under the European Communities Act 1972, relating to road transport or the carriage of goods or passengers by road;
- (y) a law in force in another Member State that corresponds to any of the foregoing offences, where the conduct constituting the offence under the law of that other Member State would, if committed in the State, constitute an offence.

SCHEDULE 2

Regulation 14

Documents to be kept at the operator's business address include—

- (a) where applicable, his or her—
 - (i) operator's licence,
 - (ii) Community licence (within the meaning of section 1 of the Act of 2011), or
 - (iii) certified true copy of driver attestation (within the meaning of section 1 of the Act of 2011),
- (b) records listed in Regulation 10(2) of the Road Safety Authority (Commercial Vehicle Roadworthiness) (Vehicle Maintenance and Repair) Regulations 2013 (S.I. No. 348 of 2013),
- (c) all record sheets, printouts and downloaded data returned by the driver, kept in chronological order for each driver and in legible form, for at least 12 months after receipt,
- (d) a record of the working pattern of each mobile worker in relation to driving, other work, breaks, daily and weekly rest periods and periods of availability,
- (e) records that show that the European Communities (Road Transport) (Organisation of Working Time of Persons Performing Mobile Road Transport Activities) Regulations 2012 (S.I. No. 36 of 2012) are being complied with,
- (f) a list of drivers with their dates of birth or a copy of the driving licence of each driver employed by the operator for any period over the previous 12 months, and copies of any P45s issued in respect of drivers,
- (g) registration numbers of vehicles operated during the previous 12 months,
- (h) vehicle registration certificates where applicable,
- (i) tachograph calibration certificates for each vehicle,
- (j) tachograph records for each driver employed, including any agency drivers, in the previous 12 months (in chronological order for each driver),
- (k) digital tachograph data in respect of each driver and each vehicle unit for the previous 12 month period,
- (l) any notification sent by the employer to drivers concerning working time,

- (m) if relevant, collective or workforce agreements concerning reference periods or night working, and
- (n) details of the average weekly time worked by each driver for the previous 2 years.



GIVEN under my Official Seal,
19 July 2018.

SHANE ROSS,
Minister for Transport, Tourism and Sport.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations give full effect to Regulation (EC) 1071/2009 of the European Parliament and of the Council of 21 October 2009, and to Commission Regulation (EU) 2016/403 of 18 March 2016 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and replace the European Union (Occupation of Road Transport Operator) Regulations 2017.

The purpose of these Regulations is to ensure that the rules on admission to the occupation of road transport operator are applied uniformly and effectively.

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nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€3.05

