

# HAULAGE PERMITS AND TRAILER REGISTRATION BILL [HL]

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Haulage Permits and Trailer Registration Bill [HL] as introduced in the House of Lords on 7 February 2018 (HL Bill 84).

- These Explanatory Notes have been prepared by the Department for Transport in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The Haulage Permits and Trailer Registration Bill makes provision to support UK hauliers to continue to operate internationally after the UK leaves the EU.
- 2 The Bill provides the Secretary of State with the powers to introduce administrative systems for haulage permits, which may be needed once the UK has left the EU, and a trailer registration scheme, which will be required following the UK's ratification of the 1968 Vienna Convention on Road Traffic (see paragraphs 41-42 of these notes).
- 3 The Secretary of State will be able to make regulations prohibiting the use of a goods vehicle registered in the UK on an international journey specified in the regulations without a permit, where such permits are provided for in an international agreement. The regulations will also set out the administrative procedures for the allocation and granting of permits, including the number of permits available, the application process, the criteria to be taken into account in determining the issue of permits, and provisions for cancelling permits. Regulations will also allow the Secretary of State to establish an appeals process for the cancellation of a permit. The Bill sets out enforcement provisions, including powers for examiners to require the production of permits and offences for breaching regulations or failing to produce a permit for inspection. The Bill also includes a power to charge fees for the application for, and the issue of, a permit.
- 4 The Bill also makes provision for the Secretary of State to establish a trailer registration scheme, in view of the provisions of the 1968 Vienna Convention on Road Traffic, to ensure that trailers can be registered before entering international traffic.<sup>1</sup> The scope of the scheme will be set out in regulations made under Part 2. Mandatory registration will apply only to commercial trailers (in practice almost exclusively HGV trailers) and the largest non-commercial trailers that enter international traffic. Smaller, common non-commercial trailers, such as caravans and horse trailers, may be registered by their keepers if they wish.
- 5 The Bill repeals the International Road Haulage Permits Act 1975 and makes new provisions. It also amends other legislation such as the Vehicle Excise and Registration Act 1994, the Goods Vehicles (Licensing of Operators) Act 1995 and the Vehicles (Crime) Act 2001, and makes consequential amendments to legislation in Northern Ireland.

## Policy background

- 6 The policy background is explained separately in the commentary relating to each part of the Bill.

## Summary

- 7 The Bill comprises three Parts.
- 8 Part 1 makes provisions in relation to the transport of goods by road.
- 9 Part 2 makes provisions in relation to trailer registration.
- 10 Part 3 makes general provisions in relation to the Bill as a whole.

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<sup>1</sup> [http://www.unece.org/fileadmin/DAM/trans/conventn/Conv\\_road\\_traffic\\_EN.pdf](http://www.unece.org/fileadmin/DAM/trans/conventn/Conv_road_traffic_EN.pdf)

## Legal background

- 11 The legislation relating to the preceding policy is set out in a combination of primary and subordinate legislation. The current provisions are the:
- International Road Haulage Permits Act 1975;
  - Vehicle Excise and Registration Act 1994;
  - Road Traffic Act 1988;
  - Road Traffic (Northern Ireland) Order 1981;
  - The Goods Vehicles (Community License) Regulations 2011; and
  - The Goods Vehicles (Community License) (Northern Ireland) Regulations 2013.

## Territorial extent and application

- 12 The Bill, apart from certain provisions, extends and applies to all of the United Kingdom. Clause 10 and paragraph 3 of the Schedule extend and apply to England and Wales and Scotland. Clause 11 and paragraphs 2 and 4 of the Schedule extend and apply to Northern Ireland. Neither the Scottish Parliament nor the National Assembly for Wales have legislative competence as far as road haulage permits and trailer registration are concerned, but the Northern Ireland Assembly does. The Government are likely to seek a legislative consent motion from the Northern Ireland Assembly for these measures should the Assembly be re-established.
- 13 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

## Commentary on provisions of Bill

### Part 1: Haulage

#### Policy Background

- 14 The EU legal framework in relation to the international carriage of goods within the EU, by way of road haulage, is based on qualitative requirements which hauliers must meet in order to obtain a Community Licence. Assuming these are met, a Community Licence enables hauliers established in a Member State to carry goods internationally within the EU. Road haulage to or through non-EU countries operates, for the most part, under bilateral arrangements.
- Currently, a Community Licence for the international carriage of goods within the EU is issued by a traffic commissioner in Great Britain to any person who has been granted a Standard International Operator's Licence on application, or by the Department for the Environment in Northern Ireland.
  - The provisions in the Bill provide for the Secretary of State to make regulations prohibiting the use of goods vehicle registered in the United Kingdom on an international journey specified in the regulations without an international road transport permit, providing that an international

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agreement to which the UK is a party provides for a permit to be carried on the specified international journey. Where the outcome of negotiations with the EU mean that existing Community Licence arrangements will no longer apply after the UK's exit from the EU, the Bill provides the Secretary of State with the powers to set up and enforce any alternative arrangements that may be agreed internationally, enabling the continued movement of goods to and from the EU by UK hauliers.

- 15 The Bill enables the Secretary of State to make regulations setting out the administrative procedure in respect of the grant of permits for specified international journeys, including the number of permits available, the application process, the criteria to be taken into account, and the procedures for varying, renewing or cancelling permits. The Bill also enables the Secretary of State to put in place an appeals process in relation to the variation or cancellation of permits, and to charge fees for the application for, issue of, and variation of, a permit.
- 16 The Bill includes provisions for enforcement, allowing an examiner to inspect and copy a permit, in order to determine whether a vehicle is being used in keeping with the regulations made under clause 1(1) or the permit requirements, and to detain a vehicle for that purpose. It also enables an examiner to prohibit the removal of a vehicle from the UK if it is breaching the regulations made under clause 1(1) or the relevant permit requirements, and creates criminal offences to aid in the enforcement of those regulations.

### Clause 1: International road transport permits

- 17 Clause 1 provides for the Secretary of State to make regulations to prohibit the use of a goods vehicle registered in the UK on international journeys unless an international road transport permit is carried on the vehicle and all the conditions of that permit are complied with.
- 18 Subsection (2) allows for a permit to take various forms, as the Secretary of State considers appropriate.
- 19 Subsection (3) specifies that this prohibition can apply to specific journeys or vehicles.
- 20 Subsection (4) defines "relevant international agreement" as an agreement relating to a country outside the UK other than Ireland, to which the UK is a party and which relates to the transport of goods by road to, in or through a country outside the UK. In relation to Ireland, a relevant international agreement is an agreement to which the UK is a party, which relates to the transport of goods by road to, in or through Ireland and which the Secretary of State has certified as an agreement to which the Government of Ireland consents. The decision in relation to whether or not to certify that the Government of Ireland consents is for the Secretary of State. If the Secretary of State certifies that an international agreement is one to which the Government of Ireland consents in circumstances where there has been no such consent, he will be acting ultra vires. The Bill caters for scenarios arising as a result of international agreements which are bilateral, such as agreements between the UK and Ireland, and multi-lateral, such as UK-EU agreements.

### Clause 2: Number and allocation of permits etc

- 21 Clause 2 provides that the Secretary of State may set out in regulations:
  - how the number of permits for specific international journeys is determined in accordance with international agreements (paragraph (1)(a)) and how the number of those permits available for classes of applicants will be determined by the Secretary of State (paragraph (1)(b));
  - the criteria that the Secretary of State must take into account when deciding whether to grant a permit (paragraph (1)(c));

- the method by which the Secretary of State decides to allocate permits where there are a limited number of permits available and the criteria are insufficient to distinguish between the applications (paragraph (1)(d)). These methods may include a random selection and first come, first served;
- that the Secretary of State may grant a permit subject to conditions and set out the consequences of failing to comply with those conditions (paragraphs (3)(a) and (b));
- provisions dealing with the duration, variation, renewal or cancellation of permits (paragraph (3)(c));
- the procedures for making applications and the information to be provided with such applications (paragraph (3)(d)); and
- the procedure for varying, renewing or cancelling a permit, and applying conditions to a permits' use (paragraph (3)(d)).

### Clause 3: Temporary exemptions

- 22 Clause 3 provides for the Secretary of State to authorise in regulations temporary exemptions from the requirement to carry a permit for UK goods vehicles (under clause 1(1)) in an emergency or to enable some other special need to be dealt with.
- 23 Subsection (2) provides that the regulations may allow for temporary exemptions to take effect by giving written notice to the operator of the goods vehicle or by publishing a notice specifying the description of goods vehicles to which the temporary exemption applies.
- 24 Subsection (3) states that the regulations must specify the vehicle or class of vehicles to which the exemption relates and the journeys which are covered by the exemption.

### Clause 4: Appeals

- 25 Clause 4 provides for the Secretary of State to make regulations enabling appeals to be made to a court or tribunal against:
- a decision to cancel or vary a permit; or
  - a decision as to the conditions under which a permit is granted.

### Clause 5: Fees

- 26 Clause 5 provides for the Secretary of State to make regulations to set the fees payable for the application, variation or renewal of a permit and for the issuing of a permit if the application is successful.

### Clause 6: Production of permits and inspection of vehicles

- 27 Clause 6 provides enforcement powers to examiners when it appears that a vehicle is being used on a relevant journey. These powers are:
- a. to require the driver to produce any international road transport permit carried on the vehicle for inspection and copying (paragraph (2)(a));
  - b. to inspect the vehicle to determine whether a permit is required and that a vehicle is being used in line with the conditions on the permit (paragraph (2)(b)); and
  - c. to detain the vehicle to carry out these checks (subsection (3)).

- 28 Subsection (4) requires an examiner using the powers under this clause to produce his or her authority to act as an examiner on request.
- 29 Subsection (5) defines “relevant journey” meaning that these powers are only exercisable if the vehicle is travelling abroad on a journey that requires a permit (under clause 1(1)), or if the vehicle will conduct a journey requiring a permit while not in the UK (under paragraph (1)(b) to this clause).

#### Clause 7: Prohibition notices

- 30 Clause 7 allows an examiner to prohibit, by written notice, a vehicle on a relevant journey from leaving the UK if the relevant permits are not carried on the vehicle as required in regulations (and subsection (2) permits this in relation to journeys which technically begin outside of the UK).
- 31 Subsections (3) to (7) contain safeguards regulating the examiner’s power to prohibit a vehicle from leaving the UK. A written notice prohibiting a vehicle from leaving the UK must be given to the driver (paragraph (4)), setting out the country to which the prohibition relates (paragraph 5(a)), the circumstances in which the prohibition is imposed (paragraph (5)(b)), the purpose for which the prohibition applies or that it applies absolutely (paragraph (5)(c) and the period for which the prohibition is in place (paragraph (5)(d)). The notice takes effect when it is given to the driver of the vehicle, and the examiner must remove the prohibition immediately if it becomes apparent either that a permit is not required for the international journey or that a permit was carried on the vehicle. The examiner must also give notice, as soon as practicable, to the operator of the vehicle if the driver is not the operator.

#### Clause 8: Offences: breach of regulations etc.

- 32 Subsections (1) and (4) make it a summary offence for an operator to breach the prohibition imposed by regulations made under clause 1(1); or to remove, or cause or permit the removal of, a goods vehicle from UK in breach of a prohibition notice imposed under clause 7. The maximum penalty on summary conviction is a level 4 fine, currently up to £2,500.
- 33 Subsections (2) and (3) make it a summary offence for the driver of a goods vehicle to refuse, without reasonable excuse, to produce a permit when required by examiner under clause 6; or to willfully obstruct an examiner in carrying out functions under clause 6. The maximum penalty on summary conviction is a level 3 fine, currently up to £1,000.

#### Clause 9: Interpretation

- 34 Clause 9 defines some of the terms used throughout Part 1 of the Bill. For the purpose of this Bill, an examiner means an examiner appointed for Great Britain under section 66A of the Road Traffic Act 1988 or for Northern Ireland under Article 74 of the Road Traffic (Northern Ireland) Order 1995.

#### Clause 10: Licensing of operators in Great Britain

- 35 Clause 10 inserts new clause 3A into the Goods Vehicles (Licensing of Operators) Act 1995 (the “1995 Act”) to allow the Secretary of State to grant a temporary exemption to an operator established outside the United Kingdom from the requirement to hold an operator’s licence in an emergency or to allow some other special need to be dealt with. In effect, this allows exemptions from permits for foreign vehicles in the same way as Clause 4 does for UK vehicles.
- 36 Subsections (2) to (3) of new clause 3A enable a temporary exemption to be granted by a notice in writing to the operator or by publishing a notice specifying the class of operators to which the temporary exemption applies. The notice must specify the vehicle or class of vehicles and the transport operation to which the exemption applies.

- 37 Subsection (3) of clause 10 amends section 4 of the 1995 Act in order to clarify that the power for the traffic commissioner to grant an exemption from carrying an operator’s licence may be granted by publishing a notice.
- 38 Subsection (4) updates the list of offences that must be notified to a traffic commissioner on application for an operator’s licence, replacing offences under the International Road Haulage Permits Act 1975 with offences in this Bill.

### Clause 11: Licensing of operators in Northern Ireland

- 39 Clause 11 amends the legislation of Northern Ireland, in similar ways to the amendment to Great Britain legislation in clause 10. The clause inserts a new clause 2A into the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 (the “2010 Act”) to allow the Department to grant a temporary exemption to an operator established outside the United Kingdom from the requirement to hold an operator’s licence in an emergency or to allow some other special need to be dealt with. In effect, this allows exemptions from permits for foreign vehicles in the same way as clause 4 does for UK vehicles.
- 40 Subsections (2) to (4) of the inserted clause 2A enable a temporary exemption to be granted by a notice in writing to the operator or by publishing a notice specifying the class of operators to which the temporary exemption applies. The notice must specify the vehicle or class of vehicles and the transport operation to which the exemption applies.
- 41 Subsection (3) of clause 11 amends section 4 of the 2010 Act in order to clarify that the power for the Department to grant an exemption from carrying an operator’s licence may be granted by publishing a notice.

## Part 2: Trailer Registration

### Policy Background

- 42 The UK’s proposed ratification of the 1968 Vienna Convention on Road Traffic (“the 1968 Convention”) will ensure that, after exit day, UK drivers will continue to be able to drive in all EU countries. A consequence of ratification is that unregistered trailers could be turned away at the borders of other countries who have ratified the 1968 Convention. Therefore, for operational reasons, a trailer registration scheme needs to be implemented.
- 43 The Bill, therefore, also enables the Secretary of State to introduce a trailer registration scheme. The powers under the Bill will enable: the registration of trailers (including issuing documents and administering the scheme – e.g. changing keepers); registration marks (more commonly known as registration numbers) to be assigned and reassigned; fees to be charged for providing these services; and rules to be introduced regarding the carrying of registration documents and the formatting and placement of registration plates. Offences (summary only) may also be created by regulations.

### Clause 12: Trailer registration

- 44 Clause 12 enables the Secretary of State, through regulations, to institute and maintain a register of trailers. These regulations may provide for mandatory or voluntary registration and additional provisions that may be required or relevant to operating the register (under subsection (2)). In particular, regulations may be made in relation to the form and contents of the register, the registration process and the transfer, surrender or destruction of registration documents. Further relevant provisions may also be made. This clause defines a trailer as anything on wheels which is intended or adapted to be pulled by a motor vehicle.

### Clause 13: Inspections and information

- 45 This clause enables regulations to be made relating to the inspection of trailers and documents. The regulations may make provision about any of the matters relating to inspections itemised in this clause, including notifications, certificates, appeals and the authorisation of inspectors. Regulations may also require individuals to provide information or things to the Secretary of State in relation to any regulations made under clause 12 (paragraph (1)(b)).

### Clause 14: Registration marks and registration plates

- 46 Clause 14 allows the Secretary of State to make provision for the assignment of registration marks to trailers when registering a trailer. The regulations may allow for registration marks be reassigned or withdrawn (subsection (2)).
- 47 Regulations made under this clause may prohibit a person from keeping or using a registered trailer unless a registration plate, bearing the trailer's registration mark, is fixed to the trailer (subsection (3)). The regulations may set out the technical specifications of registration plates and marks (size, shape, etc) (subsection (4)).

### Clause 15: Marking of trailers

- 48 Regulations made under this clause would allow for the marking of the body of a trailer with an identifying number. The regulations may specify by whom such marks may be made, the form of a mark, the manner and position in which it may be made and may require information about such marks to be provided to the Secretary of State.

### Clause 16: Fees

- 49 The Secretary of State may, through this clause, specify fees to be paid to the Secretary of State for services and documents relating to the registration of trailers. The regulations may provide that such services, etc, are not carried out until the specified fee is paid and paragraph (2)(b) sets out how such fees may be repaid by the Secretary of State when appropriate.

### Clause 17: Offences

- 50 Clause 17 allows the Secretary of State through regulations to create a range of offences associated with the trailer registration scheme, including keeping or using an unregistered or incorrectly registered trailer on a road. The offences may also relate to the breach of a specified provision of any regulations made under Part 2, the improper display of registration marks, expired registration documents, the provision of false or misleading information and/or documents and the obstructing of inspections. Any such offences would be non-imprisonable and punishable with a fine not exceeding level 3 on the standard scale.
- 51 Persons may be required, by regulations, to provide information about the identity of a person alleged to have committed an offence created under the specified sub-clauses of clause 17. Regulations may provide for it to be an offence to fail to do so. The regulations may also allow for any admissions so provided to be admitted in court as evidence.

### Clause 18: Records

- 52 Regulations made under this clause may allow for any records held by the Secretary of State in connection with functions exercised by the Secretary of State under Part 2 of this Bill to be admissible in legal proceedings as evidence of the facts stated within them, subject to authentication and any other conditions specified in regulations.

### Clause 19: Supplementary and interpretation

- 53 The application of regulations made under this Part to trailers may be limited, according to the trailer's description, circumstances, the keeper and/or user, or in any other way.

54 Clause 19 defines several of the key terms used throughout Part 2 of the Bill and sets out the criteria for determining whether a trailer is “incorrectly registered”.

## Part 3: General

### Clause 20: Consequential amendments

55 The consequential amendments are set out in the Schedule, which is explained below.

### Clause 21: Regulations

56 This section is self-explanatory.

### Clause 22: Extent

57 This section is self-explanatory.

### Clause 23: Commencement and transitional provision.

58 This section is self-explanatory.

### Clause 24: Short Title

59 This section is self-explanatory.

## Schedule

### Amendments relating to Part 1

60 Paragraph 1 repeals the International Road Haulage Permits Act 1975.

61 Paragraphs 2 to 4 make consequential amendments to existing definitions of “international road haulage permits” in primary legislation to include permits issued under this Bill.

62 Paragraphs 2 and 4 amend Article 174 of the Road Traffic (Northern Ireland) Order 1981 (paragraph 2), section 192 (1) of the Road Traffic Act 1988 (paragraph 3) and section 58 of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 (paragraph 4).

### Amendments relating to Part 2

63 Paragraph 5 amends the Vehicle Excise and Registration Act 1994. Section 22(2) of this Act allows the Secretary of State to extend registration regulations to a limited category of trailers. This power will become redundant when the Bill is passed as the power is encompassed by the powers in this Bill. As such, the powers are repealed.

64 The Vehicles (Crime) Act 2001 is amended to extend the regime for regulating the supply of vehicle registration plates to also regulate the supply of trailer registration plates. To effectively enforce this regime, existing offences in relation to the supply of vehicle registration plates will either be amended or replicated to take the supply of trailer registration plates into account.

## Commencement

65 The Bill, apart from clauses 6 - 8, will come into force on Royal Assent. Clauses 6 - 8 will come into force on such day as the Secretary of State may by regulations appoint.

## Financial implications of the Bill

66 Details of the financial implications of the Bill are set out in the Impact Assessments published alongside the Bill (see the 'Related Documents' section below). Due to the surrounding uncertainty about how these schemes may develop, a narrative type approach which describes the expected costs and benefits was considered to be the most appropriate approach. The relevant Impact Assessments are available on the Bill's pages of the Parliament website.

## Parliamentary approval for financial costs or for charges imposed

67 The Bill contains powers to apply a fee for the application for a road haulage permit and to register a trailer. All of these fees have been agreed with Her Majesty's Treasury and do not constitute "taxes" for the purpose of needing a ways and means resolution.

## Compatibility with the European Convention on Human Rights

68 Baroness Sugg, Parliamentary Under Secretary of State for Transport, has stated that in her view the provisions of the Haulage Permits and Trailer Registration Bill are compatible with the Convention rights. A statement of compatibility with Section 19 of the Human Rights Act 1998 will be provided.

## Related documents

69 The following documents are relevant to the Bill and can be read on the Bill's pages of the Parliament website:

- Impact assessments:
  - Haulage Permitting
  - Trailer Registration
- Delegated Powers memorandum

## Annex A – Territorial extent and application in the United Kingdom

The Bill extends to England and Wales, Scotland and Northern Ireland, with exceptions. Clause 10 extends to England and Wales and Scotland (this section amends the Road Traffic Act 1988 (the “1988 Act”). Clause 11 extends to Northern Ireland (this section amends the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 (the “2010 Act”). Paragraphs 2 and 4 of the Schedule extend to Northern Ireland (these paragraphs amend the Road Traffic (Northern Ireland) Order 1981 and the 2010 Act respectively). Paragraph 3 of the Schedule extends to England and Wales and Scotland only (this paragraph amends the 1988 Act).<sup>2</sup>

The Bill applies to England and Wales, Scotland and Northern Ireland, except in relation to clauses 10 and 11, and paragraphs 2-4 of the Schedule. Clause 10 and paragraph 3 of the Schedule apply to England and Wales and Scotland. Clause 11 and paragraphs 2 and 4 of the Schedule apply to Northern Ireland.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clauses 1 - 9, and 12 - 24	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes, for Northern Ireland
Clause 10	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Clause 11	No	No	No	Yes	N/A	N/A	N/A	Yes, for Northern Ireland
Schedule	In part	In part	In part	In part	N/A	N/A	N/A	Yes, in part for Northern Ireland

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<sup>2</sup> References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

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