



STATUTORY INSTRUMENTS.

S.I. No. 318 of 2009

EUROPEAN COMMUNITIES (ROAD HAULAGE AND ROAD
PASSENGER TRANSPORT OPERATOR'S LICENCES) REGULATIONS
2009

(Prn. A9/1106)

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2009

I, NOEL DEMPSEY, Minister for Transport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Council Directive No. 96/26/EC of 29 April 1996¹, and Council Directive No. 98/76/EC of 1 October 1998², hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Communities (Road Haulage and Road Passenger Transport Operator's Licences) Regulations 2009.

(2) These Regulations come into operation on 10 September 2009.

Definitions

2. In these Regulations—

“body” means a company (within the meaning of the Companies Acts) partnership or cooperative;

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

“Minister” means Minister for Transport;

“occupation of road haulage operator” means the activity of any person transporting merchandise, goods or material for hire or reward by means of either a motor vehicle or a combination of vehicles the maximum authorised weight of which exceeds 3.5 tonnes;

“occupation of road passenger transport operator” means the activity of any person operating, by means of motor vehicles so constructed and equipped as to be suitable for carrying more than 9 persons, including the driver, and intended for that purpose, passenger transport services for the public or for specific categories of users against payment by the person transported or by the transport organiser;

“transport manager” has the meaning assigned to it in the European Communities (Road Passenger Transport) Regulations 1991 (S.I. No. 59 of 1991) and the European Communities (Merchandise Road Transport) Regulations 1991 (S.I. No. 60 of 1991).

¹ OJ No. L124, 23.5.1996, p.1

² OJ No. L227, 14.10.1998, p.17

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 11th August, 2009.*

Disqualification

3. (1) Where a person is convicted of any of the following offences, namely—

- (i) murder,
- (ii) manslaughter,
- (iii) an offence under section 4 or 5 of the Non-Fatal Offences against the Person Act 1997 (No. 26 of 1997),
- (iv) a drug trafficking offence (within the meaning of section 3 of the Criminal Justice Act 1994 (No. 15 of 1994)),
- (v) an offence relating to money laundering under Part IV of the Criminal Justice Act 1994,
- (vi) an offence under the Criminal Justice (Theft and Fraud Offences) Act 2001 (No. 50 of 2001),
- (vii) an offence under section 2 of the Illegal Immigrants (Trafficking) Act 2000 (No. 29 of 2000), or
- (viii) an offence under the Firearms and Offensive Weapons Acts 1925 to 1990, or
- (ix) a sexual offence (within the meaning of section 3 of the Sex Offenders Act 2001 (No. 18 of 2001)),
- (x) an offence of aiding, abetting, counselling, procuring or attempting any of the above, or
- (xi) the corresponding offence of the law of another jurisdiction in respect of any of the above,

then for the period of—

- (a) 2 years, in case of being convicted summarily, or
- (b) 5 years, in case of being convicted on indictment,

from conviction of such offence the person so convicted is disqualified for holding an operator's licence.

(2) Where a person is disqualified for holding an operator's licence under paragraph (1)—

- (a) an application by the person for an operator's licence shall not be considered, and
- (b) an operator's licence held by the person stands revoked.

(3) A disqualification under paragraph (1) takes effect upon—

- (a) the expiration of the ordinary time for bringing an appeal against the conviction concerned, or
 - (b) in the event of an appeal—
 - (i) where the conviction concerned is confirmed, its confirmation, or
 - (ii) its withdrawal.
- (4) A person who is disqualified under this Regulation for holding an operator's licence and who while so disqualified—
- (a) engages in or attempts to engage in the occupation of road haulage operator or road passenger transport operator, or
 - (b) operates or controls for hire or reward any business or activity relating to the provisions of road haulage or road passenger transport,
- commits an offence and is liable—
- (i) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months or to both, or
 - (ii) on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or to both.

Declarations of convictions while holding operator's licence.

4. (1) The holder of or an applicant for an operator's licence shall inform the Minister of any conviction in respect of an offence referred to in Regulation 3(1) committed by him or her.

(2) Subject to paragraph (3), where the holder of or an applicant for an operator's licence fails to give information of any such conviction within 3 months of the expiry of the time allowed for making an appeal or the determination or withdrawal of the appeal, whichever is the later, or gives false or misleading information, in respect of the conviction, the Minister may revoke or suspend or refuse to grant the licence, as the case may be.

(3) In the case of a conviction imposed on the holder of or an applicant for an operator's licence before the commencement of these Regulations the obligation under paragraph (1) on the person to inform the Minister in respect of the conviction must be complied with within 3 months of such commencement.

Offence by officers of body — summary proceedings, etc.

5. (1) Where an offence under Regulation 3(4) is committed by a body or by a person purporting to act on behalf of a body and it is proved to have been so committed with the consent or connivance of or to be attributable to any wilful neglect on the part of any other person, who when the offence was committed, was, or purported to act as, a director, transport manager, secretary or other officer (including a member of any committee of management or other controlling authority) of such body, such other person as well as the body, or the

person so purporting to act on behalf of the body, commits an offence and is liable to be proceeded against and punished as if he or she committed the first-mentioned offence.

(2) Proceedings for an offence under Regulation 3(4) may be brought and prosecuted summarily by the Minister.

(3) Section 1(1) of the Probation of Offenders Act 1907 does not apply to an offence under Regulation 3(4).



GIVEN under my Official Seal,
4 August 2009.

NOEL DEMPSEY,
Minister for Transport.

EXPLANATORY NOTE.

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

The purpose of these Regulations is to give further effect to Council Directive No. 96/26/EC of 29 April 1996, and Council Directive No. 98/76/EC of 1 October 1998, on admission to the occupation of road haulage operator and road passenger transport operator, by providing for the disqualification of persons with serious convictions from those occupations.

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€2.54

