

EXPLANATORY MEMORANDUM TO

The Passenger and Goods Vehicles (Community Recording Equipment Regulation) Regulations (Northern Ireland) 2011

SR 2011 No. 235

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.
- 1.3. The rule is due to come into operation on 22nd September 2011.

2. Purpose

- 2.1. The purpose of these Regulations is to amend the definition of “the Community Recording Equipment Regulation” in the Passenger and Goods Vehicles (Recording Equipment) Regulations (Northern Ireland) 1996 and the Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card) Regulations (Northern Ireland) 2007.

3. Background

- 3.1. The amendments substitute a new definition relating to Council Regulation (EEC) No. 3821/85 so that the definition takes account of changes made to the Council Regulation as at the date of the making of these Regulations.

4. Matters of Special Interest to the Environment Committee

- 4.1. There are no matters of special interest to the Environment Committee.

5. Consultation

- 5.1. The Department consulted on the proposed regulations from 14 December 2010 to 8 March 2011. Three responses to the consultation were received. These were from the NI Judicial Appointments Commission which had no comment, the Freight Transport Association which supported the proposal and Fermanagh District Council which had no major concerns.

6. Position in Great Britain

- 6.1. The Regulations directly replicate the Great Britain provisions contained in SI 2010/892.

7. Equality Impact

- 7.1. An Equality Impact screening exercise was completed on 6 January 2010. No equality impact was identified.

8. Regulatory Impact

- 8.1. A partial Regulatory Impact Assessment was included in the consultation document and a final RIA is attached. This recommends introduction of the proposed regulations

9. Financial Implications

9.1. The Regulations have no measurable financial implications.

10. Section 24 of the Northern Ireland Act 1998

10.1. The Regulations are considered compliant with Section 24 of the Northern Ireland Act 1998.

11. EU Implications

11.1. Not applicable.

12. Additional Information

12.1. Not applicable.



Final Regulatory Impact Assessment

Proposed Passenger and Goods Vehicles (Community Recording Equipment Regulation) Regulations (Northern Ireland) 2011

Final Regulatory Impact Assessment

1. Title of Proposal

Impact assessment of the proposed Passenger and Goods Vehicles (Community Recording Equipment Regulation) Regulations (NI) 2011

2. Purpose and intended effect of measure

(i) Objective

The proposed regulations would facilitate compliance with Commission Regulation (EC) No. 68/2009 and Commission Regulation (EU) No. 1266/2009. Without the proposed regulations a person could technically commit an offence even though they are compliant with the Commission Regulations.

(ii) Background

Regulation 68/2009 makes it possible, through the use of a clearly defined and limited adaptor, for certain light vehicles to be installed with a fully functioning digital tachograph. Regulation 1266/2009 improves the design and security of the digital tachograph to make it easier for operators, drivers and enforcement authorities to use the equipment.

The proposed regulations would align domestic recording equipment legislation with Regulation 68/2009 and remove the risk of committing an offence if businesses choose to use certain light vehicles (first put into service between 1 May 2006 and 31 December 2013) which fall in-scope of the EU drivers' hours rules. By facilitating this, those operators that would have been unable to purchase certain vehicles in the future (on the basis that they could not legally operate these vehicles in-scope of the EU rules) will now be able to do so. In addition, operators who have already purchased a light vehicle on the assumption that they could use it in-scope of the EU rules can, as a result of these regulations, fit an adaptor for digital tachograph use. The use of these vehicles is likely to provide increased flexibility and cost effectiveness.

The proposed regulations would also align domestic recording equipment with Regulation 1266/2009 which facilitates the improvement of security and design of digital tachographs. There are 3 stages to the introduction of Regulation 1266/2009:

- from 11 January 2010, changes to the tachograph security mechanisms are required;
- from October 2011, a number of technical changes to the design of the tachograph will be introduced. These include amendments associated with the interpretation of Regulation 3821/85, software amendments, new workshop practices, the ability for vehicle operators to programme the vehicle registration number once using a company card and the

- ability to change the universal time co-ordinated time without it being recorded as a calibration;
- from October 2012, the digital tachograph is required to have improved security features, mainly in relation to protection against the use of magnets to manipulate the use of the digital tachograph.

3. Options

Option 1: Do nothing

Option 1 is to do nothing which would be to not update NI domestic passenger and goods vehicles recording equipment regulations in compliance with Commission Regulations 68/2009 and 1266/2009. This would mean that a person could technically commit an offence even though that person was compliant with these Regulations.

Option 2: update domestic passenger and goods vehicles recording equipment legislation

Option 2 is to update NI domestic passenger and goods vehicles recording equipment regulations in compliance with Commission Regulations 68/2009 and 1266/2009.

There are technical difficulties with installing a fully functioning digital tachograph in certain types of light vehicles which fall in scope of the EU rules when operated commercially. However, Commission Regulation 68/2009 makes it possible for digital tachographs to be installed in such vehicles using a clearly defined and limited use adaptor whilst Commission Regulation 1266/2009 improves the design and security of the digital tachograph, making it easier for operators, drivers and enforcement authorities to use the equipment.

Whilst the Commission Regulations are directly applicable (which means that transposition is not required) NI recording equipment legislation needs to be amended so that:

- an offence is committed if Council Regulation (EEC) No. 3821/85, as amended by Regulations 68/2009 and 1266/2009, is not complied with;
- a person does not technically commit an offence under NI law when complying with Regulation 3821/85 as amended.

This is accordingly the preferred option.

4. Numbers affected by the proposed regulations

For the reasons given below it has not been possible to quantify with any reasonable degree of accuracy how many vehicles will actually be affected by the proposed regulations, with the result that a monetised estimate of the associated costs/benefits has not been made.

Regulation 68/2009 will affect M1 and N1 vehicle type vehicles as defined in Annex II of Council Directive 2007/46/EC (ie., cars and light goods vehicles). Under this Directive an M1 vehicle is defined as a vehicle designed and constructed for the carriage of passengers and comprising no more than 8 seats in addition to the driver's seat; an N1 vehicle is defined as a vehicle designed and constructed for the carriage of goods and having a maximum mass not exceeding 3.5 tonnes.

DVA figures on the number of newly registered vehicles in Northern Ireland between May 2006 (when the requirement to fit digital tachographs came in) and June 2009 were examined. These indicate that there were totals of 311,999 new M1 vehicles and 40,940 new N1 vehicles that could be affected by the requirement to use a digital tachograph. However, the vast majority of these vehicles will not be affected by the proposed regulations. This is because the EU drivers' hours rules only apply to those goods vehicles over 3.5 tonnes and passenger vehicles with 9 or more passenger seats.

For most N1 vehicles (and possibly a few M1 vehicles) the EU rules will only apply on those days in which they are used commercially with a goods carrying trailer which results in the vehicle/trailer combination exceeding 3.5 tonnes. There are an estimated 10,000 category O1 trailers in Northern Ireland, trailers with a gross cargo weight not exceeding 750 tonnes which are the most likely to be used by M1/N1 vehicles. However, the vast majority of these vehicles will be able to use these O1 trailers and still remain below the 3.5 tonne threshold.

Moreover, there are a number of exceptions and derogations from the EU rules which are likely to apply to the majority of M1/N1 vehicles which have exceeded 3.5 tonnes in these circumstances. These include:

- vehicle/trailer combinations not exceeding 7.5 tonnes used for non-commercial carriage of goods;
- vehicle/trailer combinations not exceeding 7.5 tonnes used for carrying materials, equipment or machinery for the driver's use in the course of his work within a 50km radius of the base of the undertaking and provided that driving the vehicle does not constitute the driver's main activity;
- vehicles used by agricultural, horticultural, forestry, farming or fishery undertakings within a 100km radius of the base of the undertaking.

The Department therefore considers that the number of vehicles affected by the proposed regulations should be no more than a few hundred.

5. Costs and benefits

As indicated above, the proposed regulations would align domestic recording equipment legislation with Regulation 68/2009 and remove the risk of committing an offence if businesses choose to use certain light vehicles (first put into service between 1 May 2006 and 31 December 2013) which fall in-scope of the EU drivers' hours rules. By facilitating this, those operators that would have been unable to purchase certain vehicles in the future (on the basis that they could not legally operate these vehicles in-scope of the EU rules) will now be able to do so. In addition, operators who have already purchased a light vehicle on the assumption that they could use it in-scope of the EU rules can, as a result of these regulations, fit an adaptor for digital tachograph use. The use of these vehicles is likely to provide increased flexibility and cost effectiveness.

These measures are therefore deregulatory in effect and businesses that choose to incur the cost of fitting a digital tachograph are assumed to make that decision because they stand to benefit more from the use of the vehicle than those costs.

The proposed regulations would also align domestic recording equipment with Regulation 1266/2009 which facilitates the improvement of security and design of digital tachographs. The changes introduced by this Regulation are relatively minor and should not significantly affect the cost of digital tachographs. If any small additional costs occur, these are likely to fall to the operator when purchasing a new vehicle with the new digital tachograph installed.

6. Enforcement and Sanctions

The Driver and Vehicle Agency and the Police Service of Northern Ireland would enforce the proposed Regulations. However, this is not expected to increase their workload.

7. Other Impact Assessments

No equality implications have been identified (following an equality screening exercise) nor are there any human rights, environmental, rural or health issues involved. In addition, the proposed measure will have no impact on development, sustainable or otherwise.

8. Consultation

A consultation on the proposed Regulations was issued on 14 December 2010 and closed on 8 March 2011.

Three responses to the consultation were received – one from a district council, one from a representative body of the freight transport industry and

one from a judicial body. The freight transport body gave its support for the proposed regulations.

No other substantive comment was received.

9. Summary and Recommendation

The proposed regulations would align the current domestic passenger and goods vehicles recording equipment legislation with—

- (1) Commission Regulation (EC) 68/2009 which makes it possible for digital tachographs to be installed on certain light vehicles using a clearly defined and limited use adaptor; and
- (2) Commission Regulation (EU) No. 1266/2009 which improves the design and security of the digital tachograph making it easier for operators, drivers and enforcement authorities to use the equipment.

The Passenger and Goods Vehicles Recording Equipment Regulations need to be amended so that (a) an offence is committed if Council Regulation (EEC) No. 3821/85, as amended by Commission Regulations 68/2009 and 1266/2009, is not complied with, and (b) a person does not technically commit an offence under NI law when complying with Regulation 3821/85.

Accordingly, it is recommended that the Department implements option 2 above which is to update current domestic passenger and goods vehicles recording equipment legislation in compliance with Commission Regulations (EC) No. 68/2009 and (EU) No. 1266/2009.

10. Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed: ...Deirdre Kenny.....

Date: ...22nd June 2011.....

DEIRDRE KENNY
Director
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