

EXPLANATORY MEMORANDUM TO
THE ROAD VEHICLES (CONSTRUCTION AND USE)(AMENDMENT)
(No. 4) REGULATIONS 2005

2005 No. 3165

AND

THE ROAD VEHICLES (CONSTRUCTION AND USE)(AMENDMENT)
(No. 5) REGULATIONS 2005

2005 No. 3170

AND

THE ROAD VEHICLES LIGHTING (AMENDMENT)(No. 2) REGULATIONS
2005

2005 No. 3169

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

Vehicle examiners exemption

2.1 The Road Vehicles (Construction and Use)(Amendment)(No. 4) Regulations and the Road Vehicles Lighting (Amendment)(No. 2) Regulations provide an exemption for vehicles used by examiners from the Vehicle and Operator Services Agency (VOSA) from having to comply with certain requirements of the Road Vehicles (Construction and Use) Regulations 1986 (the 1986 Regulations) and the Road Vehicles Lighting Regulations 1989 (the 1989 Regulations). The exemption will allow a VOSA examiner, posing as a member of the public, to drive a vehicle with specific, recorded defects, to and from an MOT testing station, for its MOT test, with the purpose of determining whether the MOT tester not only applies the correct testing standards when conducting the MOT test but is also able to identify the defective components. In order to fall within the exemption the vehicle examiner must be authorised in writing by the Secretary of State to drive the defective vehicle and, further, the vehicle examiner driving the vehicle in question must reasonably believe that the defects will not cause a danger of injury to anyone while being so used.

Mirrors and devices for indirect vision

2.2 The Road Vehicles (Construction and Use)(Amendment)(No. 4) Regulations provide for the substitution of a new regulation 33 (mirrors and devices for indirect vision) so as to implement Directive 2003/97/EC, as amended by Directive 2005/27/EC, on the type approval of devices for indirect vision of vehicles and vehicles equipped with these devices.

Speed limiters

3.3 The Road Vehicles (Construction and Use)(Amendment)(No. 5) Regulations provide for some minor amendments to regulations 36A and 36B of the 1986 Regulations (regarding speed limiter devices). The 1986 Regulations were substantially amended last year by SI 2004/2102 in order to transpose the provisions of Directive 2002/85/EC. That Directive requires post-October 2001 diesel- engined goods vehicles over 3.5 tonnes and buses with more than 8 passenger seats to be fitted with a speed limiter. These further amendments pick up on some of the minor points of detail that were missed when the 1986 Regulations were amended to give effect to this Directive.

3. Matters of special interest to the Joint Committee on Statutory Instruments

The Department had anticipated that it might be possible to consolidate all the amendments to the 1986 Regulations in one instrument. However the amendments to regulations 36A and 36B are amending corrections and are thus required to be issued free of charge to recipients of SI 2004/2102. The Stationery Office informed the Department that if there were one consolidated set of Regulations, the entire instrument would need to be a free issue reprint, notwithstanding the amendments to regulations 36A and 36B would constitute only a small part of that entire instrument. It was therefore decided that it would be more appropriate for the correcting amendments to be inserted into a separate instrument which now comprises the Road Vehicles (Construction and Use)(Amendment)(No. 5) Regulations.

4. Legislative Background

4.1 These Regulations are made under powers conferred by section 41(1), (2) and (5) of the Road Traffic Act 1988.

Mirrors and devices for indirect vision

4.2 Regulation 33 of the 1986 Regulations sets out the existing domestic requirements for motor vehicles. Directives 2003/97/EC and 2005/27/EC set standards for mirrors and devices for indirect vision fitted to new goods vehicles, buses and cars and when implemented will allow an alternative means of compliance with the technical requirements for their fitment.

4.3 The amendments being made to the 1986 Regulations are quite substantial. It was therefore decided to provide for the substitution of regulation 33 in its entirety. Small changes have been made to the layout of some of the paragraphs within regulation 33 to provide greater clarity. It was

felt that the original wording of the provisions, with which the trade are familiar, should be retained rather than attempting to modernise the drafting.

4.4 The original proposal for Directive 2003/97/EC was the subject of an Explanatory Memorandum 5111/02 dated 20 February 2002 which was cleared by the Commons European Scrutiny Committee 26 June 2002 (Report 34, session 2001/02, reference 23155). The Committee recommended that the document was "politically important", but cleared it from Scrutiny. The House of Lords Select Committee on the European Union referred the EM to Sub-Committee B following the 1093rd sift on 26 February 2002 and cleared it by a letter to the Minister of 21 October 2002.

4.5 Directive 2005/27/EC was not subject to an EM as it went through the comitology route instead of the co-decision process like Directive 2003/97/EC.

5. Extent

These Regulations extend only to Great Britain. They do not apply in Northern Ireland. It is intended that separate Regulations will implement the requirements of Directives 2003/97/EC and 2005/27/EC in respect of Northern Ireland.

6. European Convention on Human Rights

As these Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy Background

Vehicle examiners exemption

7.1 At present, VOSA examiners are only able to submit fully roadworthy vehicles to MOT testing stations for a covert test. Although the conduct of such a covert test allows the examiner to check that the MOT tester follows the correct MOT procedures, it does not provide any insight into whether the tester is able to correctly identify vehicle defects.

7.2 The use of this exemption from the 1986 Regulations and the 1989 Regulations will therefore provide information to VOSA on the competence of MOT testers in applying the correct testing standards and in identifying defects that should reasonably be expected to be noticed during any properly carried out MOT test. The information obtained will assist VOSA in assessing which MOT testing stations may be performing the test incorrectly. It will also help VOSA to identify any additional training or guidance which may be required by the testing station staff on items within the test.

7.3 The exemption provided by these Regulations will allow VOSA examiners to drive a defective vehicle to an MOT garage for the purpose of submitting it for a covert MOT test. In order for the exemption to apply the vehicle examiner must reasonably believe that the defects in the vehicle to be

driven will not give rise to a danger of injury to anyone. This means that the vehicles to be used by vehicle examiners will not have major braking, steering or tyre defects. The defects that will be imposed on these vehicles will be minor in nature, for example, a horn not working, washers not working, rear seat belt missing/defective, passenger seat insecure, boot will not open, bonnet will not open, amongst others.

7.4 The distance that a defective vehicle would be driven by a VOSA examiner has not been specified in the exemption. This is because in some parts of the country the VOSA examiner would need to drive further to reach the MOT test station than in other areas. Where possible, VOSA examiners will be directed to drive the defective vehicles on the most direct route to, or between, the MOT garages they intend to check. Furthermore, the defects that will be imposed on the vehicle will not be ones that will deteriorate with distance driven and appropriate spare parts will be carried by the VOSA examiner – a qualified vehicle mechanic - should he / she need to rectify the fault if conditions during the journey change.

7.5 A guidance manual will be circulated to each VOSA Area Office manager and vehicle examiners will know exactly what defects were on the vehicle in advance of taking it out on the road. Vehicle examiners will also be given written authorisation by their Area Manager permitting them to drive the defective vehicle on the road for the purpose of carrying out a covert check of an MOT garage.

7.6 A full consultation exercise was undertaken and 11 responses, from organisations representing garages, the motoring trade and the police, were received. The majority of these responses (9) were in favour of the principle of covert checks with the proviso that some additional safeguards – as outlined in paragraphs 7.3 – 7.5 above - were introduced to reduce any potential risks to road safety. The provisions of the Regulations have been refined accordingly, where appropriate. Guidance issued by VOSA to the Area Offices will also further address any concerns. The Department is addressing the issues raised with a formal written response to the consultees.

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7.7 Directives 2003/97/EC and 2005/27/EC which amends 2003/97/EC are both mandatory.

7.8 The Department has received a good deal of correspondence from the public who have been involved in incidents with foreign lorries and who believe that the drivers had not seen them because of a left hand drive blind spot. Statistical evidence of road accidents, collected by the Department, shows there is also a risk that in urban environments cyclists and pedestrians will not be seen as a consequence of the height of large goods vehicles. These new measures are expected to help reduce the numbers of pedestrian, cyclist and car occupant casualties from collisions with heavy goods vehicles.

7.9 Directive 2003/97/EC requires new goods vehicles between 7.5 and 12 tonnes to be equipped in addition to their main rear view mirrors with two

wide angled mirrors, a close proximity mirror and a front mirror to cover the blind spot which exists below the windscreen; and new goods vehicles over 12 tonnes to be fitted with an additional wide angle mirror and a front mirror. The current GB provisions already require these vehicles to be fitted with wide angle and close proximity mirrors. This Directive will also require cars to be fitted with two exterior mirrors and one interior mirror. Most modern cars already have these mirrors fitted. Cameras or alternative vision systems may be used in addition to the mandatory mirror requirements. These cover all categories of vehicles, including buses which have no new mirror requirements.

7.10 Directive 2005/27/EC, amending Directive 2003/97/EC, extends the requirement for two wide angle mirrors and a close proximity mirror to be fitted to new goods vehicles between 3.5 and 7.5 tonnes. However, this requirement only applies to vehicles having high cabins similar to heavy goods vehicles and so will exclude 'Transit' type vans, for example, which represent the majority of this weight range.

7.11 The requirements will take effect for new goods vehicles used on or after 26 January 2007 and for cars used on or after 26 January 2010.

7.12 Two hundred and fifty nine organisations and interested parties throughout the United Kingdom were consulted on the draft Regulations. Those consulted included vehicle manufacturers and operators of heavy goods vehicles and buses and their trade organisations, mirror manufacturers and the police. Organisations concerned with road safety such as the Parliamentary Advisory Council for Transport Safety and the Royal Society for the Prevention of Accidents were also included in the consultation, as well as other Government Departments likely to be effected by these changes.

7.13 The Department received twenty eight responses from the consultation of which fifteen had either no comments or fully supported the proposals. Thirteen organisations had minor points to which the Department has already responded.

8. Impact

Vehicle examiners exemption

8.1 A Regulatory Impact Assessment has not been prepared in respect of these provisions in the Road Vehicles (Construction and Use)(Amendment)(No. 4) Regulations and the Road Vehicles Lighting (Amendment)(No 2) Regulations as they have no impact on business, charities or voluntary bodies.

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8.2 A Regulatory Impact Assessment has been prepared in respect of these provisions in the Road Vehicles (Construction and Use)(Amendment)(No. 4) Regulations and is attached to this memorandum.

8.3 Whilst there would be an initial cost to vehicle and component manufacturers and ultimately the end users, these increased costs are not significant overall and further must be balanced against the anticipated benefits of preventing accidents.

Speed limiters

8.4 A Regulatory Impact Assessment has not been prepared in respect of these provisions in the Road Vehicles (Construction and Use)(Amendment)(No. 5) Regulations as the impact on business, charities or voluntary bodies will not differ from the regulatory impact assessment produced for SI 2004/2102.

9. Contact

Vehicle examiners exemption and speed limiters

9.1 Rob Haggard of the Driver Vehicle and Operator Policy Unit, Department for Transport, Southside, 105 Victoria Street, London, SW1E 6DT (telephone 020 7944 2457; e-mail rob.haggard@dft.gsi.gov.uk) can answer any queries regarding these provisions in the instruments.

Mirrors and devices for indirect vision

9.2 Brian Greenway of the Transport Technology and Standards Division, Department for Transport, Zone 2/07, Great Minster House, 76 Marsham Street, London SW1P 4DR (Tel: 020 7944 2115; e-mail: brian.greenway@dft.gsi.gov.uk) can answer any queries regarding these provisions in the instrument.