

EXPLANATORY MEMORANDUM TO
THE COMMUNITY DRIVERS' HOURS AND RECORDING EQUIPMENT
REGULATIONS 2012

2012 No. 1502

1. 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1 This instrument implements a Commission Decision, updates references to an existing set of regulations and revokes a set of redundant regulations.

2.2 This instrument implements a Commission Decision of 22nd December 2008 which authorises the UK to grant an exception from the daily and weekly rest requirements in Article 8(2) and Article 8(6) of Council Regulation (EC) No. 561/2006 on drivers' hours for professional drivers operating solely within the United Kingdom when they undertake military training with the volunteer reserve forces or act as instructors in the Cadet Corps at weekend training sessions or in annual camp training.

2.3 This instrument updates the definition of 'the Community Recording Equipment Regulation' (in reference to Council Regulation (EEC) No. 3821/85 (as amended)) in Regulation 2 of the Passenger and Goods Vehicles (Recording Equipment) (Approval of Fitters and Workshops) (Fees) Regulations 1986, which concerns fees to be paid in connection with the approval of a fitter or workshop for the installation and repair of recording equipment. The change effected by updating this definition is purely administrative, to ensure that references to Council Regulation (EEC) No. 3821/85 (as amended) are up to date.

2.4 This instrument revokes the Drivers' Hours (Goods Vehicles) (Milk Collection) (Temporary Exemption) Regulations 2007. These Regulations were laid during the Foot and Mouth Disease (FMD) outbreak in August 2007 and were made redundant on 31st December 2007 when the last FMD movement restrictions were lifted. This change is purely administrative, to ensure the legislation is up to date.

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

3.1 None.

4. Legislative Context

4.1 Council Regulation (EC) No. 561/2006 sets maximum limits on driving time and minimum requirements for breaks and rest periods for most heavy goods vehicle drivers and about half the bus and coach drivers operating in Great Britain. Article 8(2) and Article 8(6) of Council Regulation (EC) No. 561/2006 set out the daily and weekly rest requirements for drivers operating in-scope of the Regulation. These rules are enforced by means of the tachograph - the use of which is governed by Council Regulation (EEC)

No. 3821/85 (as amended), which is referred to as 'the Community Recording Equipment Regulation' in domestic legislation.

4.2 The Community Drivers' Hours and Recording Equipment Regulations 2007 (SI 2007 No. 1819) gives effect to the discretionary national exemptions allowed under Article 13(1) of Council Regulation (EC) No. 561/2006 and, pursuant to Article 14.1 of Council Regulation (EC) No. 561/2006, continues to exempt certain operations that were exempted after special authorisation has been granted by the European Commission. Enforcement, which is carried out by means of the tachograph, of the maximum limits on driving time and minimum requirements for breaks and rest periods in Council Regulation (EC) No. 561/2006 is thus subject to the exemptions enumerated in the Community Drivers' Hours and Recording Equipment Regulations 2007. Thus the definition of 'the Community Recording Equipment Regulation' must be read together with the Community Drivers' Hours and Recording Equipment Regulations 2007 in order to exempt vehicles subject to the discretionary national exemptions from the requirement to be fitted with a tachograph.

4.3 In Great Britain, the penalties for non-compliance with Regulation (EC) No. 561/2006 are contained in Part VI of the Transport Act 1968, as amended.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Most drivers of large commercial goods and passenger-carrying vehicles are subject to the EU drivers' hours rules under Council Regulation (EC) No. 561/2006 limiting the amount of continuous driving time that drivers undertake and requiring them to take breaks and rest periods. The primary objectives of the EU drivers' hours rules are to promote fair competition and road safety by ensuring that drivers are not forced to work unsocial hours and suffer from driving fatigue. Separate domestic drivers' hours rules apply to most of those drivers who are specifically exempted from the EU drivers' hours rules.

7.2 According to Article 14(1) of Council Regulation (EC) No. 561/2006, Member States may, after authorisation by the European Commission, grant exceptions from the application of Articles 6 to 9 of those rules to transport operations carried out in exceptional circumstances.

7.3 The UK wrote to the Commission on 11th June 2007 seeking authorisation to grant such an exception as it considered the requirements to take a daily or weekly rest period as outlined in Articles 8(2) and 8(6) of the EU drivers' hours rules to have serious implications for the recruitment, retention and training of volunteer reservists and instructors in Cadet Corps and hence on the overall defence capability of the UK.

7.4 Employers were actively banning their drivers from being members of the volunteer reserve forces primarily because the weekly rest requirements (which require a driver to take at least 45 consecutive hours every other week, and at least 24 hours in those weeks where 45 hours is not taken) were making it virtually impossible for a professional driver to complete training as a reservist during a weekend and then resume work for his primary employer on a Monday morning.

7.5 Reservist training or Cadet Corps instruction does not count as rest, as defined in Article 4(f) of Council Regulation (EC) No. 561/2006, because a volunteer reservist or instructor in the Cadet Corps is required to follow orders and is paid for his work. Therefore he is required, in common with other drivers who have a second job, to record it as a period of other work and declare it to his primary employer.

7.6 The exception granted by the European Commission rectifies the problem outlined in paragraphs 7.4 and 7.5 by suspending the requirement to take a daily or weekly rest period for those professional drivers operating solely within the UK when they commence their military training with the volunteer reserve forces or act as instructors in the Cadet Corps at the weekend or during a period of annual camp training. This instrument applies to Great Britain because the drivers' hours legislation is a transferred matter in Northern Ireland. The Northern Ireland authorities are implementing the exception granted by the European Commission separately.

7.7 To ensure that road safety is not jeopardised, the following safeguards, as previously agreed with the Ministry of Defence (MoD), have been incorporated into the exception:

- The exception will only apply to 15 days' annual camp training and 10 weekend training sessions per annum provided that weekend training is not allowed to take place on consecutive weekends;
- A regular daily rest period of 11 hours must be taken between the end of weekend training and annual camp training and start of work for the primary employer;
- A regular weekly rest period of 45 hours must be taken no later than at the end of the sixth day following a period of weekend training or annual camp training.

7.8 This instrument also updates the definition of 'the Community Recording Equipment Regulation' (in reference to Council Regulation (EEC) No. 3821/85 (as amended)) in Regulation 2 of the Passenger and Goods Vehicles (Recording Equipment) (Approval of Fitters and Workshops) (Fees) Regulations 1986 (SI 1986/2128). This is because Council Regulation (EEC) No. 3821/85 (as amended), has been amended since SI 1986/2128 was made. These regulations concern fees which the Secretary of State may require to be paid in connection with the approval of a fitter or workshop for the installation or repair of recording equipment.

7.9 Such recording equipment, commonly known as tachographs, is used to record driver and vehicle activity to ensure compliance with the EU drivers' hours rules. SI 1986/2128 does not impose criminal offences, nor deal with substantive requirements for approval of fitters, only what fees should be paid. It is purely a tidying up exercise and will introduce no new requirements. The inclusion of this amendment will avoid the need for a separate Statutory Instrument for a minor legislative change. As SI 1986/2128 was made under Section 56 of the Finance Act 1973, Treasury approval has been obtained to make this amendment.

7.10 This instrument also revokes the Drivers' Hours (Goods Vehicles) (Milk Collection) (Temporary Exemption) Regulations 2007. These Regulations extended the maximum permissible working day of drivers engaged in the collection and transportation of milk to allow for disinfecting operations necessitated by the outbreak of Foot and Mouth Disease in Great Britain in August 2007.

7.11 During the FMD outbreak in August 2007 the Department for Environment, Food and Rural Affairs (DEFRA) requested that the daily duty limit under the domestic drivers' hours rules be extended for drivers engaged in the transportation of milk. This was to ensure that the milk industry could adhere to a voluntary agreement that was put in place after the 2001 FMD outbreak (to disinfect milk vehicles during any future outbreaks to reduce the risk of the disease spreading) without serious disruption to the milk supply chain. The disinfecting of vehicles adds around 2 hours on average to a normal collection round, during which time the driver of the vehicle remains on duty. To ensure that this additional activity could be accommodated without disruption to the milk supply chain, the principal Regulations were brought into force on 11th August 2007 to extend the daily duty time of such drivers from 11 hours to 13 hours during the FMD outbreak. Although the principal Regulations were intended to be temporary in nature, they did not specify an expiry date, because at the time they were made it was not known for how long the FMD outbreak would last. The last FMD movement restrictions were lifted on 31st December 2007, thus making the Regulations redundant.

8. Consultation outcome

8.1 The derogation was sought at the behest of industry, the MoD and MPs so is not considered contentious. The terms of the Decision were based on the specific requirements of the MoD to enable members of the volunteer reserve forces to fulfil their training obligations. Representative organisations of those most closely affected by the Regulations were informally consulted on the draft instrument and associated Impact Assessment and favourable responses were received. Given the specific nature of this limited derogation there is limited public interest.

8.2 Given the administrative nature of the updating of references to fees regulations, there is limited public interest.

8.3 Given the administrative nature of revoking the redundant regulations, there is limited public interest.

9. Guidance

9.1 The Department will publish on its website the changes resulting from this instrument.

10. Impact

10.1 The regulations will reduce burdens on businesses and have no additional cost implications.

10.2 The impact on charities, voluntary bodies and the public sector is minimal.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 This Regulation eases the burden of firms employing up to 20 as their employees who are also TA reservists do not have to make up residual rest after a training weekend and before they start work again after the weekend.

12. Monitoring and review

12.1 A review of regulation 3 will be carried out five years after the implementation date. The conclusions of the review will be set out in a report which will be published.

12.2 The review will set out the objectives intended to be achieved by the limited exception from Council Regulation (EC) No. 561/2006 established by regulation 3, assess the extent to which those objectives are achieved, and assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

12.3 In carrying out the review, regard will be taken as to how exceptions from Council Regulation (EC) No. 561/2006 (which is implemented by means of the Community Drivers' Hours and Recording Equipment Regulations 2007) are implemented in other Member States.

13. Contact

13.1 **Helen Grech** at the Department for Transport, Tel: 020 7944 2123 or e-mail: Helen.grech@dft.gsi.gov.uk can answer any queries regarding this instrument.