

EXPLANATORY MEMORANDUM TO
THE MOTORWAYS TRAFFIC (ENGLAND AND WALES) (AMENDMENT)
REGULATIONS 2004

2004 No.3258

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

2. Description

2.1 These new regulations amend the restriction on the use of the right hand or offside lane of a motorway carriageway which has three or more traffic lanes at any place where all the lanes are open for use.

2.1.1 The existing prohibition in relation to goods vehicles is extended to include such vehicles having a maximum laden weight exceeding 3.5 tonnes but not exceeding 7.5 tonnes to which a speed limiter must be fitted.

2.1.2 The existing prohibition in relation to passenger vehicles is extended to include such vehicles constructed or adapted to carry more than eight seated passengers in addition to the driver having a maximum laden weight not exceeding 7.5 tonnes and to which a speed limiter must be fitted.

2.2 The new regulations also amend the exceptions and relaxations to the prohibitions on the use of a motorway so that the position of traffic officers in uniform is similar to that of the Police.

2.2.1 Accordingly a person will not be precluded from using a motorway contrary to the general requirements applying to motorway traffic if he does so-

in accordance with any direction or permission given by a traffic officer in uniform; or

if he does so for the purpose of investigating any accident which has occurred on or near a motorway provided it is in accordance with any permission given by a traffic officer in uniform.

2.2.2 A traffic officer himself is not so precluded, provided he is in uniform, when using a motorway in the exercise of his duty as a traffic officer.

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

None.

4. Legislative Background

- 4.1 Section 17(2) and (3) of the Road Traffic Regulation Act 1984 empower the Secretary of State to make regulations with respect to the use of special roads generally. The Motorways Traffic (England and Wales) Regulations 1982 (S.I.1982/1163) set out, pursuant to these powers, what can and cannot be done, and by whom, on various parts of a motorway in England and Wales.
 - 4.1.1 In particular regulation 12 prohibits certain classes of vehicle from using the right hand or offside lane of a motorway carriageway which has three or more traffic lanes at any place where all the lanes are open for use by traffic proceeding in the same direction.
 - 4.1.2 Goods vehicles with a maximum laden weight exceeding 7.5 tonnes and passenger vehicles constructed or adapted to carry more than eight seated passengers in addition to the driver having the same maximum laden weight are already prohibited vehicles for the purpose of regulation 12.
 - 4.1.3 Regulation 16 sets out various exceptions and relaxations in relation to the provisions that apply to motorway traffic generally to ensure that people are not precluded from using a motorway, otherwise than in accordance with those provisions, in certain circumstances.
 - 4.1.4. A person is not precluded from using a motorway otherwise than in accordance with the generally applicable provisions if he does so, for example, in accordance with any direction or permission given by a constable in uniform. He is also not so precluded if, in accordance with any permission given by a constable, he does so for the purpose of investigating any accident that has occurred on or near a motorway. A constable himself is not so precluded provided he is using a motorway in the exercise of his duty.
- 4.2 Directive 2002/85/EC of the European Parliament and of the Council (OJ No. L57, 4.12.2002, p.327) amends Council Directive 92/6/EC on the installation and use of speed limitation devices for certain categories of motor vehicles in the Community (OJ No. L57, 2.3.1992, p.27). The amending Directive extends, subject to powers to derogate, the class of goods vehicle and passenger vehicle to which speed limiters must be fitted. This Directive is implemented by way of the Road Vehicles (Construction and Use) (Amendment) (No.2) Regulations 2004 (S.I.2004/2102) which come into force on 1st January 2005; being the date on which it is intended that the amendments to the motorways traffic regulations for England and Wales shall come into force.
- 4.3 Part 1 of the Traffic Management Act 2004, which in the main came into force in relation to England on 4th October 2004, makes provision for a new traffic officer service. Traffic officers may be designated as such by, or under an authority given by, the Secretary of State or the National Assembly for Wales in accordance with section 2 and in addition to other duties assigned to them have the power to stop or direct traffic and to place temporary traffic signs.

4.4 Section 134(2) of the Road Traffic Regulation Act 1984 requires that before making regulations under the Act, the Secretary of State must consult with representative organisations as he sees fit. The Department for Transport issued a consultation paper on 22 September 2004 for a 10-week consultation.

4.5 These regulations are subject to negative resolution procedures.

5. Extent

This instrument applies to England and Wales only.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 For safety and congestion reasons goods vehicles with a maximum laden weight exceeding 7.5 tonnes and passenger vehicles constructed or adapted to carry more than eight seated passengers in addition to the driver with the same maximum laden weight are already prohibited from using the right hand or offside lane of three or more lane motorways. When fitted with a speed limiter these vehicles are only capable of achieving 56 and 62 mph respectively.

7.1.1 For the same reasons it was considered appropriate to extend the prohibition to the new class of goods vehicle and passenger vehicle which must be speed limited pursuant to Directive 2002/85/EC as and when a vehicle is required to be fitted with a speed limiter in accordance with the Road Vehicles (Construction and Use) Regulations 1986. When fitted with a speed limiter such vehicles will also be unable to exceed 56 and 62 mph respectively.

7.2 The primary role of traffic officers is to help keep traffic moving on the network of motorways and trunk roads thereby relieving congestion by managing the traffic consequences of random incidents such as accidents, breakdowns, obstructions and debris and managing programmed highway events such as the passage of abnormal loads. This in turn should enable Police resources to be used more widely and efficiently.

7.2.1 In order to perform this role it was considered essential to enable traffic officers to have exemptions from, and to grant exceptions to, the motorways traffic regulations in a similar manner to that applicable to the Police.

7.3 Public interest has been minimal as demonstrated by the small response to our consultation. Of 170 organisations with an interest consulted, 31 responded (7 with no comments). 11 respondents commented, and all but one agreed, on the proposals in respect of traffic officers. All respondents supported the proposal on the restriction of the use of the right hand or off side lane of the motorway. All but 6 agreed with our proposed timing for implementation and although we gave careful consideration to the points raised by the 6 that disagreed we

did not consider that any new facts, issues or evidence were raised that should dissuade us from proceeding with the original proposals in the consultation.

7.4 These amendments are not considered to be politically or legally important.

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no significant impact on business, charities or voluntary bodies. RIAs were however published in relation to the Traffic Management Act 2004 in respect of traffic officers and as part of the public consultation on Directive 2002/85/EC for speed limiters.

9. Contact

Lesley Reed of the Road Safety Division, Department for Transport, Zone 2/11, Great Minister House, 76 Marsham Street, London SW1P 4DR (Tel : 0207 944 2452; e-mail lesley.reed@dft.gsi.gov.uk) can answer any queries regarding the instrument.