

**EXPLANATORY MEMORANDUM TO**  
**THE ROAD VEHICLES (CONSTRUCTION AND USE) (AMENDMENT NO 3)**  
**REGULATIONS 2007**

**2007 No. 3132**

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

**2. Description**

The amending Regulations

i) allow vehicle testers the option of using meters containing green light emitting diodes when administering entry into service smoke tests on non type approved vehicles, ensure that type approved vehicles are not subjected to additional construction requirements for smoke and that all vehicles are not subject to additional smoke requirements in service.

ii) exempt Class VI public service vehicles first registered before August 1979 from the requirement to meet specific smoke limits and thus having to undergo a metered smoke test in the annual roadworthiness test and

iii) apply the authorised sealer scheme for speed limiters to those categories of vehicles recently required to fit speed limiters.

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

None.

**4. Legislative Background**

4.1. The Road Vehicles (Construction and Use) Regulations (“the 1986 Regulations”) set engineering, safety and environmental standards for all motor vehicles used on the road. Regulation 61 sets out the domestic requirements relating to emissions of smoke; as an alternative to its requirements, vehicles may comply with Directive 72/306/EEC.

4.2. Directive 72/306/EEC sets out the tests to measure the emissions of smoke by diesel engines. Directive 2005/21/EC amends it, requiring Member States to permit use of meters containing green diodes as a source of light as an optional alternative to incandescent lighting when measuring smoke emissions during entry into service tests for vehicles which are subject to EC type approval. The directive also requires the light source to be adequately protected against sooting, and updates the requirement concerning the fuel to be used when conducting tests.

4.3. By an amendment to regulation 61 of the 1986 Regulations, the amending Regulations apply the provisions of the Directive to vehicles which are not subject to type approval, ensure that additional construction requirements for smoke emissions are not imposed on vehicles subject to type approval and that additional smoke requirements are not imposed on any vehicles in service 4.4 Regulation 61, paragraph 10BB of the Construction & Use Regulations exempts vehicles in class III (three wheeled vehicles), IV (cars, light vans and small minibuses), V (private passenger vehicles and ambulances with more than 12 passenger seats) and VII (goods vehicles)

and first registered before August 1979 from the requirement in paragraph (10BA) of regulation 61 to meet specific smoke emissions limits in service and thus from the necessity for a metered smoke test at the annual roadworthiness test. The Regulations amend paragraph 10BB of regulation 61 to extend this exemption to Class VI public service vehicles first registered before August 1979.

4.4. Schedule 3B to the 1986 Regulations sets out the conditions relevant to authorised sealers when sealing speed limiters fitted to vehicles to which regulations 36A and 36B of the 1986 Regulations apply. The amending Regulations apply these conditions to the additional categories of vehicles which must now be fitted with a speed limiter as a result of implementing Directive 2002/85/EC.

## **5. Extent**

This instrument extends to Great Britain.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

### **i) Use of green diode smoke meters**

7.1. By permitting testers of vehicles such as buses which are not subject to type approval to use meters incorporating green light emitting diodes as an alternative to meters using incandescent lighting, the amending Regulations allow testers the same flexibility in choosing equipment that best meets their technical and operational needs that is available to testers of type approved vehicles. In practice such cases will be the exception since most engines for non type approved vehicles will have been tested for use in type approved vehicles. The amendments also ensure however that vehicles that have been so tested as part of their EC or national type approval, are not subject to additional construction requirements in respect of smoke emissions and that all vehicles are not subject to additional in-service smoke requirements.

7.2 In respect of the directive's additional anti-sooting requirement for all meters, we understand that most manufacturers already provide adequate protection for the light source against sooting, and use the types of fuel provided for by the Directive, so that these requirements will have no impact

### **ii) Exemption for Class VI vehicles from specified smoke limits**

7.3. There are only about 1000 pre-1979 class VI diesel vehicles left in existence which are still registered for road use. These are used mainly by historical and heritage organisations for leisure and recreational activities, demonstrating the technology of a previous era. Granting this exemption should not lead to any significant adverse environmental costs. We would also be removing an unnecessary regulatory and financial burden on charitable organisations that maintain and restore historic and heritage vehicles falling within Class VI. The vehicles would still be subject to a visual smoke check as for other pre- 1979 vehicles.

### **c) Application of conditions of authorised sealers scheme to new categories of vehicles.**

7.4. The authorised sealers scheme is designed to prevent illegal tampering with speed limiters fitted to road vehicles. Extension of the authorised sealers scheme to the new categories of vehicles (heavy goods vehicles and buses) now subject to speed limiter requirements is necessary to correct an omission in earlier regulations

#### **d) Consultation**

7.5. More than 460 organisations were consulted on the amending Regulations.

#### **i) Green diode smoke meters**

7.6. No comments, other than one welcoming the Regulations were received. This part of the Regulations was also notified to the European Commission as a technical standard under the terms of the Technical Standards Directive 98/34/EC. No comments were received.

#### **ii) Exemption of pre-1979 Class VI public service vehicles from in service smoke tests**

7.7. Three heritage vehicle trusts and two individuals owning historic vehicles welcomed the Regulations. No objections were received.

7.8. On a point not directly connected to the amending regulations, the Road Rescue Recovery Association sought exemption for their members' vehicles from the current in-service smoke emissions requirements on the grounds that they were in a separate classification from goods vehicles and/or needed to tow exceptional loads and to go off road. However, the Department's policy has been to subject all road going vehicles, with few exceptions, to the emissions in-service requirements. There seems to be no reason, other than inadequate maintenance, why any modern vehicle would be at risk of failing the smoke test.

#### **iii) Comments in relation to Speed limiter sealer scheme**

7.9. No objections were made to the Regulations extending the authorised sealer scheme to cover the new categories of vehicles which were recently brought within the speed limiter scheme. Two organisations welcomed the proposal.

7.10. The Community Transport Association (CTA) supported the proposal but expressed concerns about the operation of the authorised sealer scheme in relation to the minibuses operated by their members, in particular in relation to maintenance of the integrity of the system. However, these categories of vehicles are already subject to speed limiter requirements under earlier legislation. In relation to the integrity of the speed limiter system, the Department notes that all systems must be type approved to EU directive standards and that in granting approval the authority must consider the security of the device. Sponsors of speed limiter devices are responsible for nominating sites they deem competent to install, calibrate and seal such devices and are required to audit the sites on a frequent basis to ensure they are performing the work to an adequate standard. The VOSA is considering whether enforcement can be improved through amendments to the scheme.

7.11. The Road Rescue Recovery Association sought exemption from the speed limiter requirements on the basis that their vehicles are a separate classification from goods vehicles, that their heavier vehicles tow exceptional

loads, go off road and that additional governing of the engine would adversely affect performance in recovery applications. However, the Department considers that recovery vehicles do fall into the category of "goods vehicles" as regards speed limiter requirements. As such there is no scope for exemption from the terms of the EU directive containing the speed limiter requirements. Moreover fitment of a speed limiter does not affect engine performance except when close to the limited speed and should not affect off road or recovery lifting and winching activities.

7.12. A further consultation with small business representative organisations was conducted but no comments were received.

## **8. Impact**

8.1. A Regulatory Impact Assessment is attached to this memorandum.

8.2. There are no impacts on the public sector.

## **9. Contact**

Tony Baker at the Department for Transport (tel: 020 7944 2063 or e-mail: [tonyt.baker@dft.gsi.gov.uk](mailto:tonyt.baker@dft.gsi.gov.uk)) can answer any queries regarding the instrument.

# FINAL REGULATORY IMPACT ASSESSMENT

## AMENDMENTS TO THE ROAD VEHICLES (CONSTRUCTION AND USE) REGULATIONS 1986

### 1. TITLE OF PROPOSAL

The Road Vehicles (Construction and Use)(Amendment) Regulations 2007, which would:

- Extend the flexibility afforded by European Commission Directive 2005/21/EC, (which amends Council Directive 72/306/EEC on the emission of pollutants from diesel engines for use in vehicles) to vehicles not subject to type approval, ensure that vehicles subject to type approval are not subject to additional construction requirements for smoke emissions and that all vehicles are not subject to additional in service smoke requirements;
- provide an exemption for pre-1979 Class VI public service diesel-engined vehicles from the requirement to meet specified smoke limits; and
- ensure that the additional categories of vehicles now required to have speed limiters are subject to the conditions of the authorised speed limiters scheme to prevent illegal tampering.

### 2. PURPOSE AND INTENDED EFFECT

#### 2.1. Objective

The Road Vehicle (Construction & Use) Regulations 1986 as currently amended, sets engineering, safety and environmental standards for all motor vehicles for use on the road. Our strategic objective is to contribute to greater organisational efficiency, time savings, cost benefits and more convenience for the end user without prejudicing environmental and safety concerns.

The amending regulations would make three changes to this end. Firstly, they would allow optional use of new light sources (green diodes) in meters used for entry into service smoke tests for vehicles. Secondly, they would exempt pre-1979 Class VI public service diesel engined vehicles from the requirement to meet in service smoke limits as used in annual roadworthiness tests. Thirdly, they would amend the conditions of the authorised sealers scheme for speed limiters following the implementation of Directive 2002/85/EC which extended the requirements for the fitting of speed limiters to new categories of vehicles.

#### 2.2. Background

##### **Permitting use of green diodes in smoke tests**

EU Directive 2005/21/EC, which amends Directive 72/306/EEC, allows use of smoke meters using green diodes as an alternative to incandescent light in measuring smoke emissions during entry into service tests. Transposition of this requirement into UK law is mandatory for vehicles subject to EC type approval and optional for those not subject to these requirements. The Department's Vehicle Certification Agency (VCA) has ensured transposition of the directive into the current EC type approval legislation of the UK. The directive is also being transposed into

national type approval regulations. Transposition of the requirements into the Construction & Use regulations will ensure that those regulations do not impose additional construction requirements on vehicles subject to type approval. It will also provide the same degree of flexibility for those carrying out smoke testing on vehicles not covered by type approval regulations as those carrying out such testing on vehicles covered by EC type approval. These Regulations will also ensure that both these vehicles and those type approved using a green diode are not subject to further emissions requirements after entering into service.

The regulations also implement the directive's requirement for the light source of the meter to be protected against sooting by means that do not influence the optical path length beyond the manufacturer's specifications, and extend it to the testing of non-type approved vehicles.

The regulations amend Construction & Use regulation 61 by inserting new wording in paragraph (4)(a), (ii)(aa), stating "*Community Directive 72/306(c), as last amended by Community Directive 2005/21/EC(d)*". These changes allow use of an alternative form of smoke measuring equipment, if that is preferred, and require protection against sooting as specified.

This part of the regulations was notified to the European Commission under the terms of the Technical Standards Directive 98/34/EC.

### **Exemption of pre-1979 Class VI public service vehicles from metered smoke tests**

Regulation 61, paragraph 10BB of the Construction & Use regulations exempts pre-1979 Classes III (three wheeled vehicles), IV (cars, light vans and small minibuses), V (private passenger vehicles and ambulances with more than 12 passenger seats) and VII (goods vehicles) from the in service smoke limit requirements. These are heritage vehicles, but no such exemption exists for similar pre-1979 Class VI (public service vehicles). This may be due to the fact that pre-1979 Class VI vehicle fleets were, until recently, still regularly serving several bus routes. As with other pre-1979 vehicles the Class VI vehicles would still undergo a visual emissions check in their annual test. A simple amendment to Regulation 61 paragraph 10BB(e), should be sufficient, so that it would read (additional text in bold):

*"a vehicle in Class III, IV, V, **VI** or VII within the meaning of the Motor Vehicles (Test) Regulations 1981 and first used before 1st August 1979."*

### **Amendments to the authorised speed limiter sealers scheme**

The amendments being made to the authorised speed limiters sealers scheme are consequential amendments. They follow implementation of Directive 2002/85/EC on installation and use of speed limiters. The Directive extended speed limiter requirements - subject to certain derogations and transitional provisions - to all new goods vehicles over 3.5 tonnes and to all new passenger vehicles with more than 8 passenger seats. Such vehicles have to be presented to an authorised sealer to ensure that the speed limiter is functioning correctly and has been set to the appropriate maximum speed. In principle, these requirements are already UK law, as they were transposed by SI 2004/2102, which was factually corrected by SI 2005/3170. But to ensure technical and legal consistency, Schedule 3B of the

Construction and Use Regulations, covering Conditions of the Authorised Sealer, must now be amended.

### 2.3. Rationale for government intervention

Our proposed legislation aims to

- i) provide more flexibility for testing bodies so as to enable them to choose smoke measuring equipment that best meets their operational and technical needs. This flexibility, may contribute to greater organisational efficiency, time savings and cost benefits or simply just more convenience for the end user. The amendment will also ensure that both type approved and non type approved vehicles are not subject to an in-service testing requirement.
- ii) ensure that pre-1979 Class VI public service vehicles receive the same treatment as other heritage vehicles in different classes with regard to in service smoke testing.
- iii) include in the speed limiter authorised sealer scheme the additional categories of vehicles required to be fitted with a speed limiter following the transposition of Directive 2002/85/EC.

## 3. CONSULTATION

### 3.1 Informal consultation was undertaken as follows:

**Permitting use of green diodes in smoke tests** - This issue was fully considered, as regards vehicles subject to EC type approval, within the European Commission's Motor Vehicle Emissions Group in Brussels. EC officials, Member States (including the UK) and automotive manufacturers were fully involved in the discussions.

**Exemption of pre-1979 Class VI public service vehicles from metered smoke tests** - The Birmingham and Motor Omnibus Trust had been in contact with DfT and VOSA on behalf of heritage and preservation societies. They submitted information on the mechanical impact of test and cost implications for the vehicle owners.

**Amendments to the authorised speed limiter sealers scheme** - No informal consultation has taken place as this is a minor consequential amendment. It follows DfT's public consultation on transposing Directive 2002/85/EC into UK law from 6 August to 31 October 2003. SI 2004/2102, as corrected by SI 2005/3170, which extended the requirement for the fitting of speed limiters to additional vehicles types, as required by EU legislation.

### 3.2. Formal consultation was undertaken from 12 January to 10 April 2007.

**Permitting use of Green diodes in smoke tests** No objections were received. This part of the Regulations was also notified to the European Commission as a technical standard under the terms of the Technical Standards Directive 98/34/EC. No comments were received.

**Exemption of pre-1979 Class VI public service vehicles from metered in service smoke tests** - The proposals were welcomed by several heritage bodies and individuals owning historic vehicles. No objections were received. The Road Recovery Rescue Vehicles Association (RRRA) requested a similar exemption for vehicles used by their members. However, the Department considers that engines used by such vehicles should be fully capable of meeting the in service smoke

standard. Further details may be found on the Department's consultation website at [www.dtt.gov.uk](http://www.dtt.gov.uk).

**Amendment to the authorised speed limiter sealer scheme** - No objections were made to the Regulations extending the authorised sealer scheme to cover the new categories of vehicles which were recently brought within the speed limiter scheme. However, the Community Transport Association (CTA) and the RRRA raised certain concerns about the practical effects of the speed limiters and authorised sealers scheme on vehicles used by their members. These vehicles are however already subject to speed limiter requirements, the draft Regulations simply extending the "authorised sealers scheme" to these and other vehicles *thus allowing the speed limiters to be legitimately sealed. Further details of the comments made by these bodies and the Department's response are described in more detail on the DfT consultations website.*

## 4. OPTIONS

### 4.1. Identifying the options

Option 1: Do nothing - do not amend the Construction & Use regulations. This means a) that use of green diode smoke meters would not be possible for testing of engines not subject to type approval, that engines type approved using a green diode would still be subject to further emissions requirements once they had entered into service, and that type approved vehicles would still be subject to the additional construction and maintenance requirement in regulation 61(1), which, in the case of EC type-approved vehicles, is contrary to EC law, b) that pre-1979 Class VI vehicle annual metered smoke tests would continue and c) that the conditions of the authorised speed limiter sealers scheme would not cover the categories of vehicles now required to be fitted with a speed limiter.

Option 2: Amend the Construction & Use regulations. This will a) permit optional use of green diode smoke meters for all vehicles, ensure type approved vehicles are not subject to further construction requirements for smoke emissions and that all vehicles tested using a green diode are not subject to further smoke emissions requirements after entering into service, b) exempt pre-1979 Class VI diesel engined vehicles from in service annual metered smoke testing and c) enable the conditions of the authorised speed limiter sealers scheme to cover the extended categories of vehicles now required to be fitted with a speed limiter.

## 5. COSTS AND BENEFITS

### 5.1. Sections and groups affected

#### **Permitting use of green diodes in smoke tests**

Vehicles directly affected by the draft regulations will be those not subject to type approval. These are mainly buses. It is usually the case that the engines used in such vehicles are already type approved for heavy goods vehicles. However where this is not the case, most bus manufacturers conduct smoke tests in-house, witnessed by the Vehicle Certification Agency to demonstrate that EU standards have been met. The bus manufacturer has the choice of commissioning a private sector automotive research laboratory, such as Millbrook, the Motor Industry Research Association and Ricardo to do this, though this is rare. However, as indicated above many new buses and their engines are imported, though the UK

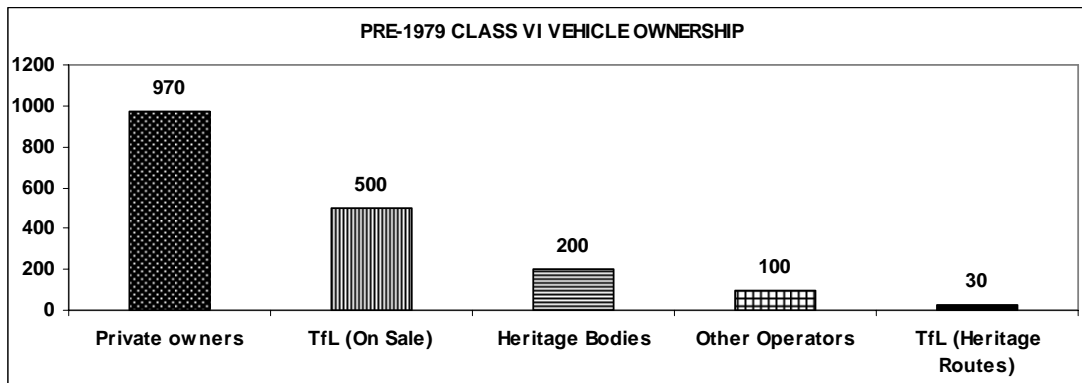


must be satisfied that they conform to EU construction standards. There are 7 bus manufacturers in the UK, all of which might be affected by this change, should they choose to adopt green diodes.

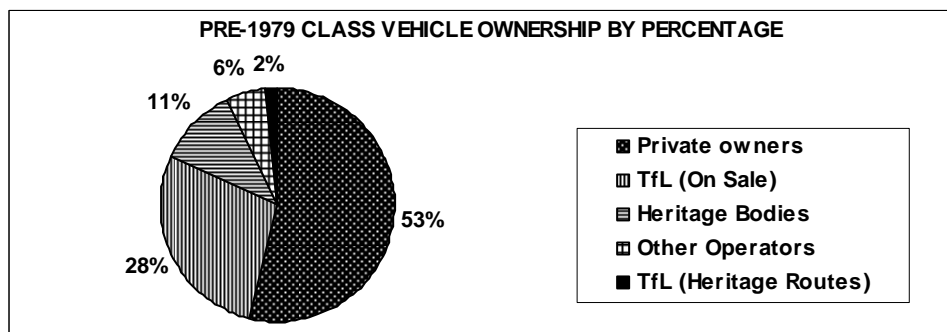
**Exemption of Class VI public service vehicles from smoke tests**

Data from the Vehicle Operator and Services Agency (VOSA) indicates that approximately 1800 pre-1979 Class VI diesel vehicles exist, but only around 1000 are registered as fit for use on the public highway. During the financial year 2004-05, 1063 of these vehicles sat the annual roadworthiness test. Broad figures on the ownership of such vehicles are shown in the graphs below:

**Graph 1: Number of pre-1979 Class VI vehicle owned by operators.**



**Graph 2: Percentage ownership of pre-1979 Class VI vehicles**



About 53% of all pre-1979 Class VI vehicles (970) appear to be privately owned by individual preservationists, whilst 500 have been put up for sale by TfL as they have been replaced by high capacity "bendy" buses. They have retained 30 vehicles for use on two "heritage" bus routes that in central London. Heritage bodies, mainly museums and preservation societies own about 200 vehicles. Of the 100 vehicles owned by other operators, up to 50 are run by major companies, such as Arriva,

FirstBus and Stagecoach. The remaining vehicles are run by independent operators, though their use is falling rapidly.

### **Amendments to the authorised speed limiter sealers scheme**

The implementation of Directive 2002/85/EC extended the categories of vehicles required to be fitted with a speed limiter. Where a speed limiter is fitted to a vehicle, it is required to be set to the prescribed speed limit set out in the Regulations. Thereafter, it is sealed by an authorised sealer to prevent any improper interference or adjustment. The amendments to the conditions of the authorised sealers scheme will require authorised sealers to seal speed limiters fitted to vehicles in these extended vehicle categories. Before doing so they are required to ensure that the speed limiters have been calibrated to the prescribed speed and are in good and efficient working order.

## **6. ANALYSIS OF COSTS AND BENEFITS**

### **Permitting use of green diodes in smoke tests**

*Option 1: Do nothing - do not amend the Construction & Use regulations.*

Use of green diodes is an accepted method amongst automotive engineers for measuring smoke emissions, compared with incandescent light equipment, but it is not a better or worse way of doing so. Not to allow testers the option of using this method would be unnecessarily and unreasonably restrictive.

*Option 2: Amend the Construction & Use regulations*

It is for testing bodies to decide which type of equipment is best suited to their needs. However, this measure widens choice and hence flexibility for test bodies whilst removing an unnecessary restriction. It will provide similar flexibility for testing bodies to that enjoyed by those testing vehicles which are subject to EU type approval. The amendment will also ensure that such vehicles are not subject to further emissions requirements in service and that type approved vehicles are not subject to further construction and in service smoke emissions requirements.

### **Exemption of pre-1979 Class VI public service vehicles from smoke tests**

*Option 1: Do nothing - do not amend the Construction & Use regulations.*

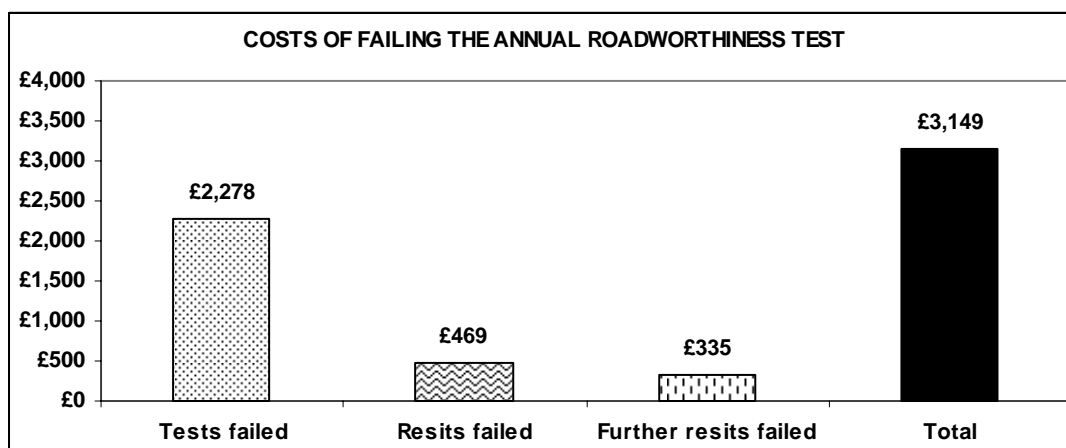
Many pre-1979 Class VI vehicles were never designed to meet current in-service metered smoke test requirements and attaining such standards will become more difficult as their original engines age. Such vehicles may sometimes fail the metered smoke test at the first attempt, but the chances of passing improve on the second or third retest. However, the chances of passing worsen, as a vehicle ages. Their owners would incur charges of £67 each time a roadworthiness test is re-attempted. Such vehicles often need to have their engines running at full speed to pass the smoke test, which increases the wear of rare parts that may no longer be manufactured and might have to be specially made.

*Option 2: Amend the Construction & Use regulations*

This measure would reduce costs incurred when such vehicles fail the initial test and owners have to pay for the vehicle to undergo further retests. The exemption will

also reduce the risk of the vehicle sustaining costly engine damage during a metered smoke test, as described above. Given that the proposal will affect around 1000 vehicles that are not in regular use, the impact on the environment will be minimal. VOSA charge £67 for undertaking annual road worthiness examinations of Class VI vehicles. The metered smoke test within this process takes only 10 minutes and removing this requirement on the small number of vehicles that are likely to benefit from the exemption is unlikely to lead to a reduction in VOSA's charges.

For the latest 12 month period for which figures are available (1 March 2005 to 28 February 2006), VOSA conducted 1063 annual roadworthiness tests for pre-1979 Class VI vehicles. Within that group, 34 failed the test, as they exceeded acceptable smoke levels. This represents a failure rate of 3.2%, compared to a 0.7% overall test failure rate for the Class VI vehicle category as a whole. Of the 34 emissions failures, 7 vehicles failed a retest and 5 failed a further retest. The additional costs to vehicle owners of having to pay VOSA to re-sit the test are set out in the following graph. This graph only shows payments to VOSA of £67 for each time a retest is applied for. It does not include the cost of possible vehicle maintenance that might be necessary to achieve a pass. Such costs can sometimes be very significant, depending on the age, type and condition of a vehicle. Unfortunately, no data is available on this particular issue.



**Graph 3: Additional fees to be paid to VOSA for failure to pass vehicle smoke tests, and re-sitting the annual roadworthiness test, 1 March 2005 to 28 February 2006**

If 1 March 2005 to 28 February 2006 is typical of a 12-month period, owners of pre-1979 Class VI vehicles would, as a group, potentially save at least £3149 per year from smoke test exemptions from wasted test fees alone. It could be argued that exemption from the smoke test would give owners of older vehicles an unfair financial advantage if they were competing to run bus services. However, this would be more than offset by the much higher maintenance costs for older vehicles. More importantly, roadworthy pre-1979 Class VI vehicles represent just 1.2% of public service vehicle fleet, of which only a very small number (approximately 130) are in regular passenger service.

## **Amendments to the authorised speed limiter sealers scheme**

*Option 1: Do nothing - do not amend the Construction & Use Regulations.*

Following the implementation of Directive 2002/85/EC the vehicles required to be fitted with a speed limiter were extended. The current conditions of the authorised speed limiter sealers scheme do not reflect these extended vehicle categories. That position will continue if the proposed amendments are not made.

*Option 2: Amend the Construction & Use Regulations*

The proposed amendments will ensure that the conditions of the authorised speed limiter sealers scheme cover all vehicles now required to be fitted with a speed limiter.

As indicated above, SI 2004/2102, as corrected by SI 2005/3170 has already broadened the speed limiter regime to cover a wider range of vehicles, as required by Directive 2002/85/EC. This increased the work of around 1000 authorised speed limiter sealer centres to cover 15,000 additional vehicles. The further proposed amendments clarify existing rules and do not by themselves add to the burdens which the earlier SIs introduced.

There will be no additional administrative burdens on business arising from these regulations.

## **7. SMALL FIRMS IMPACT TEST**

We estimate that the impact of the suggested changes on small businesses is likely to be minimal. On permitting the use of green diodes in smoke tests, some vehicle testers may be classed as small businesses but any additional costs are likely to be small, and in any case these are largely optional. The exemption of pre 1979 Class VI vehicles from smoke tests and amendments to the authorised speed limiter sealers scheme are not likely to have any adverse impacts on small businesses. We have consulted with the Enterprise Directorate of the Department for Business Enterprise & Regulatory Reform. We have also had a separate consultation with the main Small Business Trade and Representative Organisations and this resulted in no further comments.

## **8. COMPETITION ASSESSMENT**

The impact of the suggested changes on competition is likely to be minimal.

### **Permitting use of green diodes in smoke tests**

As mentioned above bus manufacturers must satisfy VOSA that EU standards have been met before their new models can enter service. Competition issues are unlikely to arise, because the vast majority of engine emissions tests are done on dynamometers using the manufacturers own facilities. A small minority of emissions tests might be undertaken by private sector automotive research laboratories. Whilst no data is available on their market share in undertaking such activities, this is likely to be less than 10%.

Most new buses are actually fitted with engines that are tested for type approval purposes overseas by foreign technical bodies, equivalent in status to the VCA. Such engines would have to meet EU construction standards for acceptance in the UK and the Vehicle Operator Services Agency would receive emissions approval

documents from those bodies. Such documents would not state whose test facilities are used. Most of these engine tests are not conducted on completed vehicles. The engine itself might be designed for use on either a truck or bus. None of these details would be stated in the documents.

The proposed amendments allowing optional use of green diodes have no impact on costs for firms and are very unlikely to affect market structure, either in terms of the size or number of firms. They do not therefore impose higher set up or ongoing costs for new or potential firms that existing firms do not have to meet. The automotive research sector is characterised by technological change and more reliable equipment is required to assess whether newer and more stringent emission standards set by government are met. The proposal does not restrict the ability of firms to choose the quality, range or location of their products. In fact the opposite is true, as it gives them flexibility to choose.

The requirement for an anti-sooting device is expected to be achieved at minimal cost and with no effect on competition.

### **Exemption of pre-1979 Class VI vehicles from smoke tests**

Whilst this proposal might potentially reduce costs for owners of pre-1979 Class VI vehicles, because such a small group is involved, it will not affect market structure, either on the size or number of firms. Transport for London owns the largest share of pre-1979 Class VI vehicles, amounting to 30% of the entire fleet. However, TfL, intend only to retain 2% for operating on heritage routes, whilst the remaining 28% is up for sale. There are no other companies that own more than 10% of the pre-1979 Class VI vehicle fleet. The proposal does not impose higher set up or ongoing costs for new or potential firms that existing firms do not have to meet. By definition, old and obsolete vehicles are not subject to technological change. The proposal does not restrict the ability of firms to choose the quality, range or location of their products.

### **Amendments to the authorised speed limiter sealers scheme**

As indicated above, the current amendments are technical and legal revisions which make Schedule 3B of the Construction and Use Regulations (i.e. the terms of the Authorised Sealer Scheme) consistent with changes introduced by earlier SIs. These have already increased the work of authorised speed limiter sealer centres and the proposed amendments only clarify existing rules and do not by themselves add to the burdens which the earlier SIs introduced.

## **9. ENFORCEMENT, SANCTIONS AND MONITORING**

Two of the proposed amendments to C&U respectively remove an in-service requirement for metered testing for a limited category of vehicles or widen the choice of equipment for entry into service smoke testing for vehicles. As such they do not introduce any requirements for enforcement, sanctions or monitoring. The consequential amendments to the authorised sealers scheme should have little or no impact upon enforcement activities, except to clarify what is required of Authorised Sealers.

## 10. IMPLEMENTATION AND DELIVERY PLAN

Smoke meter requirements - Manufacturers will need to confirm to DVLA that their vehicles meet EU smoke standards before entry into service is permitted. Engine and vehicle manufacturers and testing bodies should in general be aware of the new directive provisions, which in any event are largely optional.

In service smoke limits - Implementation will be through VOSA test centres. The relevant Test Manuals used by Vehicle Examiners will need to be amended.

Authorised sealer scheme for speed limiters - The scheme is already effectively in operation. Monitoring will be by VOSA.

## 11. POST-IMPLEMENTATION REVIEW

**Smoke meter requirements** - Through participation in the EU Commission's Comitology working groups where any necessary changes to technical specifications are reviewed.

**In service smoke limits** - Through VOSA's routine monitoring of emissions testing.

**Authorised sealers scheme for speed limiters** - Through monitoring by VOSA and its agents of the scheme.

## 12. SUMMARY COSTS AND BENEFITS TABLE

Amendment	Costs	Benefits
Permitting use of green diode meters in smoke tests	Nil - Optional facility No admin burden	Flexibility for testers. Vehicles not subject to construction requirements additional to those they faced during type approval (if applicable), and not subject to further emissions requirement in service.
Exemption for pre August 1979 PSVs from in service smoke tests	Nil Environmental cost negligible No admin burden.	Saving of £67 per vehicle for additional test plus any repair costs where failure due to smoke exceedences
Amendments to the authorised speed limiter sealer scheme	Nil No admin burden	Clarification of applicability of existing "speed limiter sealing" rules to those classes of vehicle to which speed limiter requirements were recently extended.

### **13. SUMMARY AND RECOMMENDATION**

13.1. By permitting optional use of meters with green diodes the Regulations will provide flexibility for those carrying out smoke testing on vehicles whilst ensuring that type approved vehicles are not subject to further construction requirements for smoke and that all vehicles tested using a green diode meter are not subject to further smoke emissions requirements after entering service.

13.2. Bringing the in-service emissions requirements for Class VI pre-1979 PSVs into line with those for other categories of vehicles of a similar age will provide some benefit to owners whilst having minimal if any environmental impact.

13.3. Extending the authorised sealer scheme for speed limiters to those categories of vehicles to which speed limiter requirements were recently applied, will help to ensure the satisfactory working of the speed limiter requirements.

13.4. No significant costs to any of the bodies affected will be incurred as a result of these Regulations and there will be no adverse effect on competition, small business, safety or the environment. No objections to any aspect of the Regulations were received as a result of public consultation nor, in the case of the use of green diode meters, as a result of their notification to the European Commission as a technical standard.

**13.5. It is therefore recommended that the regulations be made.**

### **14. DECLARATION AND PUBLICATION**

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed Jim Fitzpatrick.

Date 30th October 2007.

Jim Fitzpatrick

Parliamentary Under Secretary of State

Department for Transport

### **15. CONTACTS**

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