

EXPLANATORY MEMORANDUM TO
THE DRIVERS' HOURS AND TACHOGRAPHS (AMENDMENT) REGULATIONS
2020

2020 No. 1658

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.
- 1.2 This Statutory Instrument is made under the European Union (Future Relationship) Act 2020 (c. 29) ("the 2020 Act") and is required so that rules relating to drivers' hours and tachographs can continue to be enforced in Great Britain and Northern Ireland in respect of vehicles engaged in commercial road transport under the terms of the Trade and Cooperation Agreement between the European Union and the United Kingdom ("TCA"). Nearly all international commercial road transport involving the UK will be operated under the relevant terms of the TCA. The drivers' hours and tachograph rules are important to public safety and this instrument is required to ensure that such rules can continue to be enforced effectively.
- 1.3 The instrument extends to Northern Ireland (where road transport responsibilities are devolved). Its provisions enable relevant provisions of the TCA to be implemented properly in respect of international road transport, further to the UK Government's responsibility to implement the TCA.
- 1.4 This instrument is being made further to the power in section 31 of the 2020 Act and the procedures set out in paragraph 14 of Schedule 5 to that Act and will then be considered under the affirmative procedure. It is being made urgently to ensure that drivers' hours rules and tachograph rules can continue to be enforced effectively under the terms of the TCA, and to avoid any gap in enforceability. This urgency has arisen because of the short period of time between the end of the UK/EU trade negotiations and the end of the implementation period.
- 1.5 It is vital drivers' hours and tachograph rules continue to be enforced in respect of international road transport. Tachograph manipulation can facilitate driving when extremely fatigued, leading to the risk of catastrophic losses of control of large vehicles. In the order of 500 offences per month related to drivers' hours or tachograph breaches are detected by the Driver and Vehicle Standards Agency. A gap in enforcement would be liable to be swiftly recognised by many drivers and operators and would risk some of them changing behaviour. Hence the urgent procedure has been used for this instrument.

2. Purpose of the instrument

- 2.1 The instrument extends the application of the retained UK versions of the EU drivers' hours and tachograph regulations: namely Regulation (EC) No 561/2006 ("the EU Drivers' Hours Regulation") and Regulation (EU) No 165/2014 ("the EU Tachographs Regulation"). This is to give effect to the TCA by extending them to international road transport journeys between the UK and EU, not involving third countries. This includes nearly all international operations of goods vehicles weighing more than 3.5 tonnes involving UK territory. It applies to relevant transports

for both UK-based and non-UK-based operators. It is the Department's view that this approach properly implements the terms of the TCA.

What did any relevant EU law do before exit day?

- 2.2 The EU Drivers' Hours Regulation specifies EU-wide drivers' hours rules. Under these rules, drivers must not drive more than a certain number of hours in any given day, week, and fortnight. They must also take a minimum of breaks and rests. These rules apply to drivers of most large vehicles (i.e. goods vehicles weighing over 3.5 tonnes and passenger vehicles with 10 or more seats).
- 2.3 The drivers' hours rules are, in the main, enforced through monitoring tachographs. A tachograph is a device installed in a vehicle that drivers must use to record their driving, break and rest times. The EU Tachographs Regulation specifies the rules relating to the construction, installation, use, testing and control of tachographs used in road transport.

Why is it being changed?

- 2.4 Heading Three: Road Transport - of Part Two - Trade, Transport, Fisheries and Other Arrangements - of the TCA ("the Roads Chapter") at Articles Road.7 and 8, specifies that the drivers' hours and tachograph rules which will be applicable between the UK and the EU from implementation period completion day ("IP completion day") will be consistent with rules set out in the TCA. The rules set out in the TCA are the principal features of the EU Drivers' Hours Regulation and the EU Tachograph Regulation. In the Roads Chapter, Article Road.7 refers to Annex Road-1, part B, sections 2 to 4, which outline the relevant rules for drivers' hours and drivers' use of tachographs. Article Road.8 refers to Annex Roads-1, part C section 2, which outlines further relevant rules for tachographs. The Department considers that the TCA is properly implemented by the changes made by this instrument.
- 2.5 With effect from IP completion day, the two EU regulations will be retained (as "retained EU law") under section 2 of the EU (Withdrawal) Act 2018. On 04 March 2019, the Drivers' Hours and Tachographs (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/453) ("the EU Exit Regulations") were made to make the appropriate legislative changes for Great Britain to remedy the deficiencies in the retained EU law which would arise as a result of the withdrawal of the UK from the EU. The Drivers' Hours and Tachographs (Amendment) Regulations (Northern Ireland) 2019 ("the NI EU Exit Regulations") were also made to make the appropriate legislative changes for NI.
- 2.6 The EU Exit Regulations were also made to prepare for a 'no-agreement' scenario by ensuring that if there was no deal between the UK and EU in this area, the applicable drivers' hours and tachograph rules between the UK and EU would be the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport of 1 July 1970, as amended ("the AETR"). The AETR is a United Nations Economic Commission for Europe (UNECE) Agreement and the UK, the 27 EU Member States, and a further 21 countries (including EEA Member States Norway and Lichtenstein, but not Iceland), are Contracting Parties to it.
- 2.7 The AETR drivers' hours and tachograph rules themselves are in many cases the same as the equivalent rules in EU legislation, but AETR and EU legislation is not fully identical in what it permits and prohibits.

- 2.8 The TCA supersedes the AETR in respect of drivers' hours and tachograph rules for international transports conducted within the combined territories of the UK and EU. The retention of the EU Drivers' Hours Regulation and EU Tachograph Regulation provided for in the absence of TCA exclude their application to international transports as the AETR would have applied instead.
- 2.9 From IP completion day, domestic legislation, as amended by the EU Exit Regulations and the EU Exit NI Regulations, will allow for the enforcement of offences under the retained EU law and the AETR; but not for the TCA.

What will it now do?

- 2.10 This instrument will amend domestic legislation to ensure the Roads Chapter in the TCA which covers the drivers' hours and tachograph rules, which will become applicable to journeys between the UK and EU from IP Completion day, can be enforced. It does so by providing that the EU Drivers' Hours Regulation and the EU Tachographs Regulation which are retained in domestic legislation will apply to journeys between the UK and the EU.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The powers under which this instrument is made cover the entire United Kingdom. The territorial application of this instrument is set out in section 4 of this document.

4. Extent and Territorial Application

- 4.1 The territorial extent and application of this instrument is England, Wales, Scotland and Northern Ireland.
- 4.2 Although the subject matter of this instrument is transferred to Northern Ireland, this instrument extends to Northern Ireland. This is to enable the correct application of the drivers' hours and tachograph rules required by the TCA to all of the relevant international road transports.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State, Rachel Maclean has made the following statement regarding Human Rights:

“In my view the provisions of the Drivers' Hours and Tachographs (Amendment) Regulations 2020 are compatible with the European Convention on Human Rights.”

6. Legislative Context

- 6.1 This instrument amends the Transport Act 1968 and Road Traffic Offenders Act 1988 in Great Britain to ensure the scope of powers to enforce offences for non-compliance with the EU drivers' hours and tachograph rules include offences driving undertaken under the TCA. The instrument amends the scope of the retained EU Drivers Hours Regulation and EU Tachographs Regulation so they apply to international road

transport as required in the TCA. The instrument amends the EU Exit Regulations by omitting a regulation which would amended paragraphs 2 and 3 of Article 3 of Regulation (EC) 561/2006 on coming into force at the end of the IP.

7. Policy background

What is being done and why?

- 7.1 The regulatory provisions relating to drivers' hours and tachographs are an important pillar of the UK's road safety regime. They limit the time drivers can spend at the wheel and thus help reduce fatigue-related accidents, ensure fair competition in the industry and improve the working conditions of drivers. The TCA makes no changes to the drivers' hours and tachograph rules currently applicable for journeys between the UK and EU.
- 7.2 This instrument is being made on behalf of Northern Ireland (NI). The drivers' hours and tachographs rules, which relate to the carriage of goods and passengers by road, is a transferred matter for Northern Ireland under the Northern Ireland Act 1998. However, due to the extremely tight deadline for making these changes it has been agreed with the Department for Infrastructure in Northern Ireland that this instrument would also include changes affecting Northern Ireland.

8. Withdrawal of the United Kingdom from the European Union

- 8.1 Although this instrument relates to withdrawal from the European Union; it is not made using powers under the EU (Withdrawal) Act, so does not trigger the statement requirements under the EU (Withdrawal) Act.

9. Consolidation

- 9.1 Not appropriate.

10. Consultation outcome

- 10.1 There has been no consultation on this instrument as the UK-EU negotiations were confidential and not open to the public.

11. Guidance

- 11.1 There is no need to update guidance on this instrument as it just ensures the TCA is enforceable in the field of drivers' hours and tachographs. This will be covered in the general advice to hauliers on the TCA.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies, since there will be no substantive changes to the requirements of the drivers' hours and tachograph rules as a consequence of this instrument or the TCA.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment (IA) has not been prepared specifically for this instrument because the costs and benefits to business are expected to be minimal. However, an IA was completed for similar potential provisions under consideration but not included in the EU (Future Relationship) Bill. This included the effects compared to a non-negotiated outcome. This IA concluded that if an agreement was reached and

this SI was made there would be no overall impacts, as the drivers' hours and tachograph rules in the TCA are aligned to the current rules under the EU drivers' hours and tachograph regulations; which are currently directly applicable (Regulation (EC) No. 561/2006 and Regulation (EU) 165/2014).

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that there will be a minimal impact on small businesses because this instrument does not modify the substantive requirements for those subject to the drivers' hours or tachograph rules.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that it will be monitored alongside the European Union (Future Relationship) Act 2020.

15. Contact

- 15.1 Helen Grech at the Department for Transport, can be contacted with any queries regarding this instrument. Her contact details are: Email: helen.grech@dft.gov.uk or Telephone: 07717 800687.
- 15.2 Duncan Price, Divisional Manager of the Freight Operator Licensing & Roadworthiness Division at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rachel Maclean MP, Parliamentary Under Secretary of State, can confirm that this Explanatory Memorandum meets the required standard.