

EXPLANATORY MEMORANDUM TO
THE ROAD VEHICLES (CERTIFICATES OF TEMPORARY EXEMPTION)
REGULATIONS 2020

2020 No. 812

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 memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The instrument allows the Secretary of State to issue certificates of temporary exemption (“CTE”) from the requirement to hold a test certificate for public service vehicles adapted to carry more than eight passengers and goods vehicles (including trailers but excluding light vans) – collectively known as heavy vehicles – and to take road safety risk into account when deciding whether to issue a CTE for a vehicle.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The enabling powers for the instrument, contained in section 13 of the Business and Planning Act 2020, came into force on 22nd July 2020 – the same day that Act received Royal Assent – and the instrument will come into force on 21st August 2020. As detailed in section 10, the Department consulted with interested parties on these changes and the early commencement is expected.

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales and Scotland.
- 4.2 The territorial application of this instrument is England, Wales and Scotland.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The Road Traffic Act 1988 generally prohibits the use of a heavy vehicle on a road unless a test certificate has been issued for that vehicle within the past year (see section 47 for public service vehicles and section 53 for goods vehicles). That Act

also confers powers on the Secretary of State to make regulations governing the issue of CTEs in prescribed circumstances. The existing provisions made under those powers can be found in regulation 28 of the Motor Vehicles (Tests) Regulations 1981 and regulation 46 of the Goods Vehicles (Plating and Testing) Regulations 1988. In summary, they allow for a CTE to be issued for a vehicle when exceptional circumstances will prevent its test taking place.

- 6.2 The enabling powers were reformed and expanded by section 13 of the Business and Planning Act 2020 to address a deficiency that became apparent during disruption to the vehicle testing regime caused by the spread of coronavirus (see the policy background below). The instrument is the first to be made under the reformed powers.

7. Policy background

What is being done and why?

- 7.1 Heavy vehicle roadworthiness testing was suspended in March 2020 due to the safety risk posed by the spread of coronavirus to testing staff (employed by the Driver and Vehicle Standards Agency – “DVSA”) and vehicle operators. While this step was necessary, it has resulted in a backlog of over 200,000 incomplete tests as of July 2020. CTEs have been issued for all affected vehicles.
- 7.2 Heavy vehicle testing was reintroduced on 4th July, on a voluntary basis, with CTEs still available for those vehicles not getting a test. If mandatory testing was reintroduced immediately, demand for testing services would hugely outstrip supply, leading to vehicles being taken off the road until they could be tested.
- 7.3 The Department has decided that the testing capacity available should be used to test the vehicles posing the highest road safety risk, while safer vehicles can be tested when capacity allows. This new approach, which will necessarily involve the exercise of the DVSA’s judgement, has been enabled by the changes introduced by the Business and Planning Act 2020.
- 7.4 Regulation 4 of the instrument specifies how DVSA will assess road safety risk:
- (a) the age of the vehicle, for example DVSA may issue CTEs to vehicles up to two years old. Historical testing data shows that test failure rates increase with vehicle age. For example, the average failure rates for heavy vehicles up to 2 years old are around 4%. This is compared to the average failure rate across all ages of 12-15% for different types of heavy vehicle.
 - (b) CTEs may be issued for vehicles used by the holder of an operator’s licence who is a member of DVSA’s Earned Recognition scheme, in which operators have to share performance data with DVSA, or depending on their Operator Compliance Risk Score (“OCRS”). This is a score assigned to all operators by DVSA on the basis of their historic compliance with traffic and roadworthiness laws. Annual test failure rates are lower for Earned Recognition scheme members and increase with worsening OCRS scores.
- 7.5 The DVSA may also consider actions taken by traffic commissioners when issuing or revoking CTEs. Traffic commissioners are responsible for the licensing and regulation of those who operate heavy vehicles.
- 7.6 The Regulations allow the DVSA to issue a CTE for a vehicle when exceptional circumstances will prevent its annual test taking place or for the purpose of mitigating the effects of exceptional circumstances on vehicle testing more generally.

Exceptional circumstances include an accident, a fire, an epidemic, severe weather, a failure in the supply of essential services or another unexpected event, including prior or subsequent disruption attributable, in whole or in part, to such an event.

- 7.7 With regards to goods vehicles, a CTE can only have effect in relation to a goods vehicle that is subject to testing under the Goods Vehicles (Plating and Testing) Regulations 1988. This does not include light vans and other smaller goods vehicles.
- 7.8 The level of public interest in this policy area is low (although it is sometimes conflated with light vehicle MOTs which are of more interest). However, there is significant interest from those affected, mainly haulage and passenger transport operators (and their industry associations).

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 None.

10. Consultation outcome

- 10.1 The Department for Transport consulted with representative organisations on the reintroduction of heavy vehicle testing and the new approach to issuing CTEs for several weeks before the making of the instrument, which was shared in draft form with key stakeholders.
- 10.2 Trade associations, including the Freight Transport Association, Road Haulage Association and Confederation of Passenger Transport, were consulted during the drafting of these Regulations. They were broadly supportive and provided feedback on a draft of the instrument. One key change which was suggested was an extension of the maximum duration of CTEs, from the initially proposed six months to twelve, for operators or vehicles with the best safety profile. This change would allow those vehicles to remain on their original maintenance schedule whilst following the risk-based principles. Following consideration, this change was made to the instrument.

11. Guidance

- 11.1 Department for Transport and DVSA communications to operators have made clear that testing has restarted on a voluntary basis. Further communications to operators will provide information on the effects of these Regulations. No formal guidance will be provided.

12. Impact

- 12.1 An Impact Assessment has not been prepared for this instrument because the net overall impact on business is considered to be very low. Although the date of roadworthiness testing may be altered, the requirements of these tests are unchanged. In addition, operators are already obliged to maintain their vehicles in a roadworthy condition via periodic maintenance
- 12.2 There is no, or no significant, impact on business, charities or voluntary bodies. The intention of DVSA is to test vehicles posing a higher road safety risk first, while safer

vehicles will be tested when capacity allows. This means the date of testing may be altered, but the requirements of that test are unchanged.

- 12.3 There is no, or no significant, impact on the public sector. DVSA testing staff have already returned to work. The effect of this measure is to alter the profile of vehicles being tested, but the tests would take place regardless.

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. Vehicle testing standards are unchanged, only possibly the timing of this test.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is for DVSA to monitor the number of vehicles requiring tests, compare this to the available testing capacity and exempt vehicles accordingly. The DVSA is able to revoke exemptions if a vehicle is used by an operator subjected to action by a traffic commissioner or the vehicle is used by another operator that is deemed to be a higher risk. The effect of these exemptions on road safety are likely to only surface after the issuing of CTEs has halted, as the testing backlog has been addressed. Further, these powers may only be used in “exceptional circumstances” or related disruption so a periodic review clause would be inappropriate.
- 14.2 The Regulations do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Baroness Vere has made the following statement: “In my view a review would be disproportionate as these Regulations will only be relied upon in relation to exceptional circumstances, which will rarely exist, and have no other impact on the users of heavy vehicles.”.

15. Contact

- 15.1 Michael Sedgwick at the Department for Transport, telephone: 07500 573572 or email: Michael.Sedgwick@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Duncan Price, Deputy Director for Freight, Operator Licencing and Roadworthiness, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Vere at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.