

EXPLANATORY MEMORANDUM TO
THE DRIVERS' HOURS AND TACHOGRAPHS (TEMPORARY EXCEPTIONS)
REGULATIONS 2021

2021 No. 58

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport (“DfT”) 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 This Statutory Instrument provides for temporary exceptions to certain provisions of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 (“the Drivers’ Hours Regulation”) which establishes standard rules for permitted driving times and work patterns for drivers of heavy goods vehicles (HGVs). These temporary exceptions are necessitated by the impact of the current exceptional circumstances of changes to the border controls and the impact of Coronavirus.
- 2.2 The temporary exceptions are modifications to certain provisions, taking the form of permitted increases to some of the standard time limits for drivers’ hours and permitted changes to some break and rest requirements. The exceptions can be relied upon by HGV drivers undertaking journeys within Great Britain, between Great Britain and Northern Ireland, and international journeys.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Department regrets that this instrument breaches the rule that statutory instruments subject to the negative procedure should normally be laid, and copies provided to the Committee, 21 days before the instrument comes into force. Having reviewed the current risks to goods vehicle operations created by changes to border controls and by the Coronavirus pandemic, the Government is acting promptly to ensure that HGV drivers can, between 22 January and 31 March 2021, and where necessitated by these exceptional circumstances, amend their permitted driving patterns.

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. The powers under which this instrument is made are reserved in respect of Scotland and Wales, but devolved in respect of Northern Ireland. 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 of this instrument is England and Wales and Scotland.
- 4.2 The territorial application of this instrument is England, Wales and Scotland.
- 4.3 The subject matter of the Drivers' Hours Regulation is a devolved matter in Northern Ireland.

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 instrument will, for the temporary period, make temporary exceptions to the Drivers' Hours Regulation, that can be relied on by a driver in the circumstances set out in the instrument.
- 6.2 The Drivers' Hours Regulation concerns the amount of driving and working time that can be carried out by most HGV drivers and some bus and coach drivers.
- 6.3 The Drivers' Hours Regulation forms part of retained EU law under Section 3 of the EU (Withdrawal) Act 2018. It applies to both journeys within the UK and to journeys within the combined geography of the UK and the EU. Articles 14(1) and 25A of the Drivers' Hours Regulation, as amended by S.I. 2019/453, enable exceptions from usual requirements to be made by statutory instrument for transport operations carried out in exceptional circumstances.
- 6.4 Prior to the end of the transition period, Regulation (EC) No 561/2006 required that an article 14(1) temporary exemption be made by the European Commission. The temporary exemption must now be made by statutory instrument.
- 6.5 The instrument is made under powers provided for in Articles 14(1) and 25A of the Drivers' Hours Regulation.
- 6.6 The instrument will provide for similar temporary exceptions to drivers' hours, which were made administratively under Article 14(2) of the Drivers' Hours Regulation, and which have been in effect for the maximum permitted period between 23 December 2020 and 21 January 2021.

7. Policy background

What is being done and why?

- 7.1 Temporary exceptions to the EU drivers' hours rules for HGV drivers were introduced for the period 23 December 2020 to 21 January 2021 to ensure critical supply chains were maintained. This was in the light of potential severe disruptions stemming from a culmination of circumstances including changed border arrangements and the continued Coronavirus effects on retail demand and driver availability.
- 7.2 The situation as of mid-January 2021 and liable to pertain for at least a further few weeks is that risks to critical supply chains due to Coronavirus remain, and disruption to these supply chains could occur at very short notice. Workforces including drivers have been and are liable to be reduced (including at short notice) due to high absence levels, risking the maintenance of important supply chains. The situation has

worsened substantially during the last month. Some usual mitigations (such as training more drivers) are not available. Drivers' hours relaxations can assist industry with mitigating risks to supply chains potentially continuing into February and March.

- 7.3 The situation is exacerbated by the impact on vehicle flows of changes to border controls following the end of the transition period of the UK's exit from the EU.
- 7.4 The purpose of the temporary exceptions is to allow such drivers to either drive for up to 11 hours (as opposed to 9 or 10 hours) during a single day or to allow a weekly rest period, normally required after six days, to be taken after seven days. This is to increase the flexibility of driving and work patterns in the current exceptional circumstances.
- 7.5 Drivers may also increase the weekly and fortnightly driving limits from 56 hours to 60 hours and 90 hours to 96 hours respectively. The amendments also reduce the permissible daily break from work from 11 hours (reducible to 9 hours three times a week) to 9 hours. Permissible interruptions to breaks in relation to ferry crossings are also increased in number and total duration. For such drivers, only when in Kent on journeys out of the UK via the Channel Tunnel or Dover, breaking 45-minute rest breaks into up to three blocks of 15 minutes each is also allowed.
- 7.6 The instrument also provides exceptions to some of the rules for HGV drivers in the course of domestic transport within GB for the temporary period.
- 7.7 These exceptions allow two reduced weekly rest breaks to be taken consecutively, provided in a period of four weeks a driver also takes two full weekly rest breaks. The standard rules already permit this pattern for international transports. A reduced weekly rest break lasts at least 24 hours, a full weekly rest break at least 45 hours.
- 7.8 For domestic journeys the temporary exceptions also increase the fortnightly driving limit from 90 to 96 hours (including in recognition of the extra day involving driving during certain fortnights provided by allowing two reduced weekly rest breaks to be consecutive).
- 7.9 Drivers may use either, but not both, of the sets of available exceptions.
- 7.10 Use of the relaxations is on the understanding that driver welfare and road safety must not be compromised. Employers remain responsible for the health and safety of their employees and other road users. The regulations and notifications being published about the relaxations also made it clear that the relaxation should only be used where necessary. Otherwise, the normal drivers' hours rules are to be followed.

8. Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument 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 Consolidation is not relevant to this instrument.

10. Consultation outcome

- 10.1 There has been no formal consultation on this instrument, although advice has been taken from representatives from the logistics and retail sector.

11. Guidance

- 11.1 Guidance has already been published about drivers' hours rules including existing temporary relaxations (ending on 21 January 2021) during the period of disruption associated with Coronavirus. The guidance is published at:
<https://www.gov.uk/government/publications/covid-19-guidance-on-drivers-hours-relaxations/coronavirus-covid-19-guidance-on-drivers-hours-relaxations>
- 11.2 There is no need to update guidance on this instrument, although notifications about the extent of the relaxations and the conditions related to them will be published on the DfT website and circulated, including to the European Commission for onward, urgent notification to, amongst others, EU Member States. The publication and circulation of the notifications follows an established and recognised process. It is designed to ensure enforcement authorities across the EU recognise the temporary exceptions made to the rules and do not apply the unmodified normal rules to those drivers in the scope of the temporary exceptions.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is that these temporary measures will assist the maintenance of supply chains in exceptional circumstances and will avoid some disruption. The temporary exceptions will expire and there will be no permanent impact to business or on the requirements of the drivers' hours rules, as a consequence of this instrument. There is no, or no significant, impact on charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been produced for this instrument because it makes urgent provision relaxing some restrictions and is to have effect for a period of less than 12 months.

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. This legislation reduces the degree of regulation temporarily. Business can continue to operate using the normal rules.
- 13.3 The basis for the final decision to take no specific action to assist small businesses is because this instrument does not modify the permanent requirements for those subject to the drivers' hours rules.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that it will be monitored via roadside enforcement by the Driver and Vehicle Standards Agency who are responsible for enforcement of the EU drivers' hours rules in Great Britain. DfT will also monitor the use of the relaxations within Great Britain by requiring operators to inform DfT of their intention to use the relaxations, and to later inform DfT how they were used.

15. Contact

- 15.1 Steve Oliver at the Department for Transport, can be contacted with any queries regarding this instrument. His contact details are: Email: steve.oliver@dft.gov.uk or Telephone: 07919 867924
- 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 Baroness Vere, Parliamentary Under Secretary of State, can confirm that this Explanatory Memorandum meets the required standard.