

EXPLANATORY MEMORANDUM TO
THE DRIVERS' HOURS AND TACHOGRAPHS (AMENDMENT) REGULATIONS
2021 No. XXXX

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to remedy deficiencies in retained European Union (EU) law arising from the withdrawal of the United Kingdom (UK) from the EU, in the field of drivers' hours and tachographs for the carriage of goods and passengers by road.
- 2.2 This instrument uses powers under Section 8 of the European Union (Withdrawal) Act 2018 ("the EU Withdrawal Act") to ensure that the retained EU drivers' hours and tachograph regulations, that were amended during the Implementation Period, do not contain deficiencies following implementation period completion day ("IP completion day").

Explanations

What did any relevant EU law do before IP completion day?

- 2.3 Regulation (EC) No 561/2006 ("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).
- 2.4 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. Regulation (EU) No 165/2014 ("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?

- 2.5 With effect from IP completion day, the two EU regulations will be retained (as "retained EU law") under the EU Withdrawal Act. On 04 March 2019, the Drivers' Hours and Tachographs (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019 No. 453) ("the EU Exit Regulations") were made to make the appropriate legislative changes to remedy the deficiencies in the retained EU law which will arise as a result of the withdrawal of the UK from the EU. The EU Exit Regulations will come into force on IP completion day.
- 2.6 However, after the EU Exit Regulations were made, the EU made changes to most commercial road transport rules. These changes are generally referred to as the

‘Mobility Package’. The changes made by the Mobility Package to the EU drivers’ hours and tachographs regulations came into force on 20 August 2020, and were made by Regulation (EU) 2020/1054. The changes were directly applicable within the EU (including the UK).

- 2.7 The EU Withdrawal Act provides for changes to EU Regulations that are both in force and applicable during the Implementation Period to be saved into UK law from 1 January 2021. As the changes made by the Mobility Package to the EU Drivers’ Hours Regulation and the EU Tachograph Regulation became applicable during the Implementation Period, these changes will be retained in UK law. The changes made by the Mobility Package give rise to new deficiencies. Although the EU Exit Regulations will come into force on IP completion day, because the Mobility Package came into force after the EU Exit Regulations were made, the EU Exit Regulations do not remedy these deficiencies.

What will it now do?

- 2.8 This instrument will amend the retained versions of the EU Drivers’ Hours Regulation and the EU Tachograph Regulation, as amended by the Mobility Package and the EU Exit Regulations. These amendments will ensure the amended retained EU law applies appropriately in the UK; and will remove references to functions performed by the European Commission and will clarify the types of tachographs applicable in the UK.

3. Matters of special interest to Parliament

- 3.1 None.
- 3.2 This instrument was laid for sifting by the Sifting Committees on 7 January 2021. The Committee’s decision was

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)

- 3.3 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, Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is the same as the territorial extent of this instrument.
- 4.3 Although the subject matter of this instrument is transferred to Northern Ireland, this instrument extends to Northern Ireland, in agreement with the Northern Ireland Department for Infrastructure.

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 EU Drivers' Hours Regulation applies to drivers of goods vehicles with a maximum permissible weight exceeding 3.5 tonnes and passenger vehicles with 10 or more seats, unless covered by a specific EU-wide exemption or a national derogation. It prescribes maximum limits on driving time and minimum requirements for break and rest periods and recording requirements for drivers of vehicles within the scope of that Regulation.
- 6.2 A tachograph is a recording device on board the vehicle used to monitor and enforce a driver's compliance with the EU Drivers' Hours Regulation. The EU Tachograph Regulation sets out the requirements on the construction, installation, use, testing and control of tachographs used in road transport in the EU.
- 6.3 On IP completion day, the EU Withdrawal Act makes provision for repealing the European Communities Act 1972 ("the ECA") and will preserve EU law, as it stands on IP completion day, in UK law. It enables the creation of a new body of domestic legislation by bringing the texts of directly applicable EU legislation into domestic legislation, as well as saving EU-derived domestic legislation which was made to implement the UK's obligations as a member of the EU. The Act also contains temporary powers to make secondary legislation to enable Ministers and the devolved administrations to deal with deficiencies in retained EU law.
- 6.4 The EU Exit regulations were made to amend both the EU Drivers' Hours and the EU Tachograph Regulations, as they will be retained by the EU Withdrawal Act on IP completion day. However, since the EU Exit Regulations were made, changes have been made to both the EU Regulations, by Regulation (EU) 2020/1054, which came into force on 20 August 2020 (the Mobility Package). the changes made by the Mobility Package will not be captured by the EU Exit Regulations, and will introduce new deficiencies into the retained versions of the EU Regulations.
- 6.5 This instrument will correct these new deficiencies, by making amendments such as:
 - a) removing inappropriate references to member states;
 - b) removing requirements relating to international journeys, as the retained EU law will only cover domestic journeys;
 - c) removing references to functions conferred on the European Commission after IP completion day;
 - d) removing references to 2nd generation smart tachographs, which are contingent on implementing acts that will be introduced after IP completion day and so will not apply to the UK .

7. Policy background

What is being done and why?

- 7.1 The aim is that the effects of EU law in the area of drivers' hours and tachographs will be unchanged. This entails correcting deficiencies which arise in the law as a result of the UK's withdrawal from the EU.
- 7.2 The regulatory provisions relating to drivers' hours and tachographs are a fundamental 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 policy intention of this

instrument is that this regulatory regime will be fully functional after the Implementation Period. This instrument does not modify the requirements for those drivers subject to the drivers' hours or tachograph rules before IP Completion Day.

- 7.3 The drivers' hours and tachographs rules relate to the carriage of goods and passengers by road. This is a transferred matter for Northern Ireland under the Northern Ireland Act 1998. However, the 2019 Regulations, which were made to amend the EU retained Regulations, extended to Northern Ireland. This was due to the absence of a Northern Ireland Executive, at that time, and to ensure a functioning statute book across the UK, including in Northern Ireland, for IP completion day. This was done in consultation with the Northern Ireland departments. Although Northern Ireland now has a sitting Executive, the Department for Transport has agreed with the Northern Ireland Department for Infrastructure that it would make practical sense for this instrument to extend to Northern Ireland.

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

- 8.1 This instrument is being made using the power in section 8(1) of the European Union (Withdrawal) Act 2018 to address failures of retained EU law to operate effectively, or other deficiencies arising from the withdrawal of the UK from the EU.

9. Consolidation

- 9.1 There are no plans to consolidate existing legislation concerning drivers' hours and tachographs.

10. Consultation outcome

- 10.1 Stakeholder consultation was not undertaken in relation to this instrument.
- 10.2 However, the Department for Transport Ministers and officials have regular engagement with the road transport industry. Through specific meetings and at long-established stakeholder forums, a number of issues related to the UK's withdrawal from the EU have been addressed, including the proposed Mobility Package changes to the EU drivers' hours and tachograph regulations. Most recent engagement on the Mobility Package changes was in March 2020 when an update to stakeholders (SMMT, Logistics UK, Road Haulage Association, Confederation of Passenger Transport, UNITE the Union, and the United Road Transport Union) was sent summarising the proposed Mobility Package changes to the drivers' hours and tachograph rules which were likely to come into force. In addition, once the final Mobility Package changes were published in the EU Official Journal, a presentation to stakeholders was given to go through the changes.

- 10.3 The Northern Ireland Department for Infrastructure has been consulted in the preparation of this instrument.

11. Guidance

- 11.1 The guidance on gov.uk covering drivers' hours and tachographs was updated on 20 August 2020 to take into account the Mobility Package changes to the EU drivers'

hours and tachograph regulations. The guidance will be updated again after the Implementation Period.

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.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the costs and benefits to business are expected to be minimal.

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 no specific monitoring arrangements are needed.
- 14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Rachel Maclean MP, Parliamentary Under Secretary of State, has made the following statement:

“Having had regard to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015, and the statutory guidance under section 31 of that Act, I have decided that it is not appropriate to make provision for review of those provisions of this instrument because it would be disproportionate to do so taking into account the economic impact of those provisions. Those provisions ensure that for those who must comply with the drivers' hours and tachograph rules, the requirements remain the same after IP completion day.”
- 14.3 In so far as this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Helen Grech or Jane Simmonds at the Department for Transport, can be contacted with any queries regarding this instrument. Their contact details are: Email: helen.grech@dft.gov.uk or Telephone: 07717 800687; or Email: jane.simmonds@dft.gov.uk, or Telephone: 0797 111776.
- 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, Under Secretary of State, can confirm that this Explanatory Memorandum meets the required standard.

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-Ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	<p>Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	<p>Statement setting out:</p> <p>a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament,</p> <p>b) containing information about the relevant authority's response to—</p> <p>(i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and</p> <p>(ii) any other representations made to the relevant authority about the published draft instrument, and,</p> <p>c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.</p>

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Sifting statement(s)

1.1 The Under Secretary of State, Rachel Maclean has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Drivers’ Hours and Tachographs (Amendment) Regulations 2021 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

1.2 This is the case because: the instrument makes minor changes to correct deficiencies to the retained EU law as it applies to the rules on drivers’ hours and tachographs after IP completion day.

2. Appropriateness statement

2.1 The Under Secretary of State, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Drivers’ Hours and Tachographs (Amendment) Regulations 2021 does no more than is appropriate.”

2.2 This is the case because: the changes are minor and technical in nature, and are necessary to ensure that the EU retained law concerning drivers’ hours and tachographs contain no deficiencies in light of the UK’s withdrawal from the EU.

3. Good reasons

3.1 The Under Secretary of State, Rachel Maclean, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

3.2 These are set out in paragraphs 6.3 - 6-5 and 7.1-7.3 of this explanatory memorandum.

4. Equalities

4.1 The Under Secretary of State, Rachel Maclean MP has made the following statement:

“The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

The effect of this instrument is to correct deficiencies to the retained EU law as it applies to the rules on drivers’ hours and tachographs after IP completion day.”

4.2 The Under Secretary of State, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Rachel Maclean, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010. This Act does not extend to Northern

Ireland, and as The Drivers' Hours and Tachographs (Amendment) Regulations 2021 extend to Northern Ireland, I have given equivalent due regard to the need to eliminate discrimination, harassment and victimisation in relation to Northern Ireland.”

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.