EXPLANATORY MEMORANDUM TO

THE COMMUNITY DRIVERS' HOURS AND WORKING TIME (ROAD TANKERS) (TEMPORARY EXCEPTION) (AMENDMENT) REGULATIONS 2006

2006 No. 244

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

This explanatory memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 These Regulations amend the Community Drivers' Hours and working Time (Road Tankers) (Temporary Exception) Regulations 2006 (SI 2006/17) by extending to 12th March 2006 the temporary and limited relaxation of the EU Drivers' Hours and Working Time Rules for tanker drivers directly affected by the major fire in December 2005 at the Buncefield fuel depot in Hemel Hempstead, Hertfordshire. The Regulations are intended to help ensure that essential fuel supplies are maintained whilst fuel distribution arrangements are re-organised following the fire.

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

3.1 These Regulations are an emergency measure and breach the 21-day rule. They need to come into force on 11th February 2006 because the current relaxation of the Drivers' Hours and Working Time Rules, provided for by the Community Drivers' Hours and Working Time (Road Tankers) (Temporary Exception) Regulations 2006, ends on 10th February 2006 (see paragraph 4.7). These Regulations were not made and laid earlier because the Department was waiting to hear from the European Commission (see paragraphs 7.4 to 7.6).

4. Legislative Background

4.1 The EU Drivers' Hours Rules (Council Regulation (EEC) No 3820/85) limit driving time, set minimum break and rest requirements and apply to most HGV drivers in this country. Although there are many exceptions, in simplified terms the main limits and requirements are: 9 hours maximum daily driving; 90 hours maximum fortnightly driving; 11 hours minimum daily rest; 45 hours minimum weekly rest; and 45 minute breaks for every 4½ hours driving.

4.2 Article 13(2) of Council Regulation (EEC) 3820/85 provides that Member States may, after authorisation by the European Commission, grant exceptions from the provisions of the EU Drivers' Hours Rules for transport operations carried out in exceptional circumstances. However, in urgent cases, Member

States may grant a temporary exception for 30 days and then notify the Commission.

4.3 In the immediate aftermath of the Buncefield fire, the Department for Transport relaxed the enforcement of the EU Drivers' Hours Rules temporarily and notified the Commission. This relaxation applied only to:

- those tanker drivers directly affected by the fire;
- other drivers working for local businesses directly affected by the fire; and
- driving necessary to meet the exceptional circumstances occasioned by the fire.

4.4 For the drivers in question, this temporary relaxation allowed:

- a daily driving limit of 10 hours instead of 9;
- the lifting of the fortnightly driving limit of 90 hours; and
- a minimum weekly rest requirement of 24 hours instead of 45.

However, the requirements to take an 11 hour daily rest and to take a 45 minute break after 4½ hours driving remained unchanged and continued to be rigorously enforced.

4.5 The temporary relaxation of the EU Drivers' Hours Rules has a direct impact on the Road Transport (Working Time) Regulations 2005 (the 2005 Regulations), which implement Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities. Basically, the 2005 Regulations limit working time to an average of 48 hours per week and no more than 60 hours in any single week.

4.6 Directive 2002/15/EC states that the EU Drivers' Hours Rules take precedence, so a temporary relaxation of the 2005 Regulations was also made to take account of the relaxation of the EU Drivers' Hours Rules. The effect of this relaxation was that, for the drivers in question:

- additional working necessary in order to take advantage of the temporary EU Drivers' Hours Rules relaxation, up to a limit of 6 hours per week, need not count for the purposes of calculating the weekly average under the working time rules; and
- for the same purpose, a maximum of 66 hours may be worked in any single week.

4.7 After the initial relaxation of enforcement, the Community Drivers' Hours and Working Time (Road Tankers) (Temporary Exception) Regulations 2006 applied the modifications set out above to the EU Drivers' Hours Rules and the 2005 Regulations, for tanker drivers directly affected by the fire, for 30 days until 10th February 2006.

5. Extent

5.1. These Regulations apply to Great Britain.

6. European Convention on Human Rights

6.1. As these Regulations are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1. On 11th December 2005, a major fire occurred at the Buncefield fuel depot in Hemel Hempstead, Hertfordshire. Buncefield was the UK's 5th largest fuel depot, accounting for approximately 9% of the UK's transport fuels and 20% of the fuels in the South East. As a result of the fire, alternative fuel distribution arrangements have been required in order to help maintain essential fuel supplies in and around London and the South East. For example, tanker drivers who would usually operate from Buncefield have had to work from other depots, such as Kingsbury and Purfleet, which involve lengthy round-trips which eat into their available driving and working time. For those companies' worst affected by the fire it is estimated that the impact is equivalent to approximately an additional 3 hours driving time per shift, representing a loss of nearly 30% in the delivery capacity of the vehicles.

7.2. For those drivers affected, the relaxation of the Drivers' Hours Rules and the 2005 Regulations, provided initially by the temporary enforcement relaxation and subsequently by the Community Drivers' Hours and Working Time (Road Tankers) (Temporary Exception) Regulations 2006 (see paragraphs 4.3 to 4.7), has provided those drivers with additional driving and working time in order to help compensate for the longer journeys that they were necessarily making. Without this relaxation the Drivers' Hours Rules and the 2005 Regulations would have effectively imposed a barrier to maintaining fuel supplies.

7.3. The Department has liaised closely with the Department for Trade and Industry (DTI) on the length of the relaxation required. DTI advised that, in light of the impact on the fuel distribution arrangements in London and the South East, as set out in paragraph 7.1, a relaxation for tanker drivers directly affected by the fire was required until mid-March to enable the industry to adjust its supply chain arrangements so that it can operate within the Drivers' Hours Rules and the 2005 Regulations.

7.4. The Department wrote to the European Commission (via the UK Permanent Representation to the European Union) on 21st December 2005 notifying the Commission of the temporary and limited relaxation to the enforcement of the Drivers' Hours Rules and requesting permission to relax the Rules for tanker drivers directly affected by the fire for a further two months, to enable the relaxation to last until mid-March. However, due to the formal procedure that the Commission must complete before approving such requests the Department had not received the Commission's approval before the end of the initial enforcement relaxation.

7.5. Given that the matter was still urgent, due to the potential barrier that the Drivers' Hours Rules and the 2005 Regulations could create to maintaining essential fuel supplies in London and the South East without a further relaxation, the Department granted a new 30 day exception to tanker drivers directly affected by the fire only, by the Community Drivers' Hours and

Working Time (Road Tankers) (Temporary Exception) Regulations 2006, and notified the Commission. The Department has continued to press the Commission for a decision, but due to ongoing delays in its formal approval procedure the Commission has informed the Department that it will not receive a decision before the end of the current exception on 10th February.

7.6. DTI has confirmed that relaxation of the Drivers' Hours Rules and the 2005 Regulations is still required until mid-March. In the absence of a decision from the Commission, and given that the matter is still urgent, the Secretary of State has made these Regulations to grant a further 30 day exception for the drivers of tankers directly affected by the fire. The Regulations will end on 12th March. By then the fuel supply industry should have adjusted its supply chain arrangements, so a further relaxation is not expected to be required.

7.7. The Department has raised with the Commission its concerns that the Commission's internal decision making process for granting exceptions for longer than 30 days is not compatible with urgent cases like Buncefield and will pursue with the Commission whether a more responsive procedure might be applied in future to prevent this situation arising again.

7.8. The changes implemented by the Regulations are not in themselves politically or legally important.

8. Impact

8.1. There are 23 companies and approximately 1550 drivers affected by these Regulations. The effect will be that the companies will be able to make the longer trips needed in the current situation, using existing drivers. The Regulations will therefore help to ensure that essential fuel supplies are maintained whilst distribution arrangements are re-organised. Since the change to the EU Drivers' Hours Rules and the 2005 Regulations will be temporary and restricted in scope, the financial and other impacts should be negligible. A Regulatory Impact Assessment is therefore not required.

8.2. The impact on the public sector is minimal. The Vehicle and Operator Services Agency and the Police are the main public bodies affected as they are responsible for enforcing the EU Drivers' Hours Rules and the 2005 Regulations. The Regulations will have negligible impact on them as they already enforce the rules and are aware of the companies and drivers to which the Regulations will apply.

9. Contact

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