EXPLANATORY MEMORANDUM TO

THE COMMUNITY DRIVERS' HOURS AND RECORDING EQUIPMENT REGULATIONS 2007

2007 No.

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

2. Description

2.1 This Instrument will facilitate compliance with a new European Regulation (EC) No 561/2006 on drivers' hours (hereafter referred to as "the new EU Regulation"). Although the new EU Regulation is directly applicable, this Instrument is necessary to:

- put in place new enforcement provisions;
- define historic status (for the purpose of a new automatic exemption); and
- implement some of the discretionary national derogations available to Member States (which exempt certain vehicles from the new EU Regulation).

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

3.1 None.

4. Legislative Background

4.1 The new EU Regulation:-

- repeals the existing EU drivers' hours rules (Council Regulation (EEC) No 3820/85); and
- amends certain aspects of Council Regulation (EEC) No 3821/85 and Regulation (EC) No 2135/98 governing the installation and use of tachographs on those vehicles that are subject to the EU drivers' hours rules.

The new EU Regulation, for the most part, came into force on 11th April 2007. However, certain elements, primarily relating to tachographs, came into force on 1st May 2006 (20 days after the new EU Regulation was published in the Official Journal of the European Union).

4.2 Although there is no need to replicate all of the provisions of the new EU Regulation, because it is directly applicable, changes to domestic legislation are required to:-

- put in place some new drivers' hours enforcement provisions;
- define historic status for the purpose of a new automatic exemption from the EU drivers' hours rules; and
- exercise various discretionary national derogations from the EU drivers' hours rules (thereby exempting certain types of operation from the scope of the EU drivers' hours rules).

4.3 This Instrument

- revokes the Community Drivers' Hours and Recording Equipment (Exemptions and Supplementary Provisions) Regulations 1986[1], as amended, which set out the national derogations adopted under the previous EU drivers' hours rules - Council Regulation (EEC) No 3820/85; and
- makes consequential amendments to Part VI of the Transport Act 1968, as amended, which sets out the drivers' hours enforcement penalties (in relation to both the EU and domestic drivers' hours rules).

4.4 A Transposition Note is at **Annex A**.

4.5 A brief scrutiny history is at **Annex B**.

5. Territorial Extent and Application

5.1 This Instrument applies to Great Britain.

6. European Convention on Human Rights

Dr Stephen Ladyman, Minister of State for Transport, has made the following statement regarding Human Rights:

"In my view, the provisions of the Community Drivers' Hours and Recording Equipment Regulations 2007 are compatible with the Convention rights".

7. Policy background

7.1 Most drivers of large commercial vehicles are subject to the EU drivers' hours rules. These rules limit continuous driving time and require drivers to take minimum breaks and rest periods. This helps to reduce the risks of drivers becoming involved in fatigue-related accidents and thus improves road safety.

7.2 In order to enforce the EU drivers' hours rules, it is important to have a record of drivers' activities. Therefore, vehicles subject to the EU drivers' hours rules have to be fitted with a tachograph, which records the drivers' activities.

7.3 In October 2001, the European Commission published a proposal for a new EU Regulation on drivers' hours to clarify and simplify the existing legislation (which had been in place for 20 years), make it easier to enforce, and update the various exemptions and discretionary national derogations. The Department consulted widely on this proposal in December 2001, and the Government's negotiating position took into account

[1] SI 1986 No 1456.

the responses received. The text was finally agreed by the Conciliation Committee of the European Parliament and of the Transport Council in December 2005 and published in the Official Journal of the European Union on 11th April 2006.

7.4 As set out in paragraph 4.2 whilst the new EU Regulation is directly applicable, various changes to domestic law are required in order to facilitate compliance with the new EU Regulation and to exercise discretionary national derogations where appropriate.

7.5 The Department for Transport carried out a public consultation on the proposed changes to domestic legislation required in order to facilitate compliance with the new EU Regulation. The 12 week consultation period began on 26th October 2006 and concluded on 17th January 2007. The consultation document was sent direct to over 270 consultees and was also published on the Department's website. Sixty-two responses were received. An analysis of the responses was completed and consultees views were taken into consideration when finalising this Instrument. A copy of the consultation report is available on the Department's website at www.dft.gov.uk.

7.6 The main issues on which views were sought were the proposed approaches to the:

- new enforcement measures and the penalties to be applied;
- definition of "historic vehicle" for the purposes of applying a new automatic exemption from the new EU Regulation; and
- adoption of discretionary national derogations.

7.7 In terms of the new enforcement provisions proposed in the consultation document, the means of dealing with the automatic liability of transport undertakings for infringements committed by their drivers, and the option to make this liability conditional, proved to be the most contentious.

7.8 The majority of respondents thought that it would be more appropriate to have a defence that mirrored the wording in Article 10.3 of the new EU Regulation. Consequently, a defence will be adopted that requires a transport undertaking to prove that it has not infringed provisions on pay, organising work, driver instruction and regular checks under Articles 10.1 and 10.2 of the new EU Regulation, as well as having to establish that it could not reasonably be held responsible for the infringements committed by the driver.

7.9 Most respondents agreed with the proposed penalty structure in respect of the new offence and so these will be implemented as proposed.

7.10 On the definition of "historic vehicle" for the purpose of the new automatic exemption for non-commercially operated historic vehicles, the majority of respondents thought that the restrictions proposed were particularly onerous. In view of the case put forward by the historic vehicle fraternity, which was supported by the Vehicle and Operator Services Agency (VOSA), the definition of a historic vehicle will be simplified in this context as one which was manufactured more than 25 years before the occasion on which it is being driven.

7.11 Generally speaking, the proposals in the consultation document for implementing the national derogations were considered to be acceptable by most respondents. Some respondents requested confirmation on how certain aspects of the national derogations would be applied and interpreted, and this will be provided separately in guidance.

7.12 A few respondents expressed concern about those current national derogations (and exemptions) which will no longer be available, and about those which will have new conditions attached to them under the new EU Regulation. To accommodate these concerns it would be necessary to amend the new EU Regulation itself and there is no scope for doing so.

7.13 The VOSA who are the main body responsible for enforcing the EU drivers' hours rules in Great Britain (the police also enforce the rules) have published updated guidance detailing the changes introduced by the new EU Regulation. This guidance can be accessed from both the Department's and VOSA's (www.vosa.gov.uk) website.

7.14 Apart from the fact that this Instrument implements certain provisions of a new EU Regulation, the changes implemented by this Instrument are not in themselves politically or legally important. Although this Instrument makes amendments to the Transport Act 1968, as amended, there are currently no plans to consolidate this Act.

8. Impact

8.1 A Regulatory Impact Assessment is attached at **Annex C**.

8.2 The impact on the public sector is minimal. The main public body affected will be VOSA, and to a lesser extent the police, as they are responsible for enforcing the new EU Regulation. As the new EU Regulation does not place any additional duties on enforcement bodies this Instrument should not result in increased costs for them.

9. Contact

Andrew Angel at the Department for Transport, Zone 1/31, Great Minster House, 76 Marsham Street, London. Tel: 020 7944 2752, or e-mail: andrew.angel@dft.gsi.gov.uk, can answer any queries regarding this Instrument.

ANNEX A

TRANSPOSITION NOTE

Transposition note for Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85

Regulation (EC) No 561/2006 on drivers' hours is directly applicable so there is no need to replicate all the provisions into domestic legislation. This Transposition Note only covers those articles that place a requirement on Member States to implement the provisions into national law. These articles are being implemented in Great Britain by the Community Drivers' Hours and Recording Equipment Regulations 2007 ("the 2007 Regulations").

In this Transposition Note, "VOSA" means the Vehicle and Operator Services Agency.

Article	Purpose	Implementation	Responsibility
3(i)	Exemption for non-commercially operated historic vehicles	Regulation 3 of the 2007 Regulations defines historic status.	Secretary of State
2(3)	Applies the AETR agreement to specific international road transport operations	Regulation 8(b) of the 2007 Regulations implements this requirement by amending section 103 of the Transport Act 1968, as amended.	Secretary of State
10(3)	Automatic operator liability for infringements committed by their drivers'	Regulations 7(a)(ii) and (b) and 8(a) of the 2007 Regulations implement this requirement by amending sections 96 and 103 of the Transport Act 1968, as amended.	Secretary of State
10(4)	Co-liability for consignors, freight forwarders, tour operators, principal contractors, subcontractors and driver employment agencies	Regulation 7(c) of the 2007 Regulations implements this requirement by amending section 96 of the Transport Act 1968, as amended.	Secretary of State
10(5)	Operator downloading data requirements from digital tachographs	This will be implemented by separate legislation later this year.	Secretary of State
13(1)(a)	National derogation for vehicles owned or hired, without a driver, by public authorities to undertake carriage by road which do not compete with private transport undertakings	Regulation 2(1)(a) and paragraph 1 of Part 1 of the Schedule of the 2007 Regulations implement this derogation. Regulation 4(1) of the 2007 Regulations exempts these vehicles from the requirement to have a tachograph.	Secretary of State
13(1)(b)	National derogation for vehicles used or hired, without a driver, by agricultural, horticultural, forestry, farming or fishery	Regulation 2(1)(a) and paragraph 2 of Part 1 of the Schedule of the 2007 Regulations implement this derogation. Regulation 4(1) of	Secretary of State

	undertakings for carrying goods as part of their own entrepreneurial activity within a radius of up to 100 km from the base of the undertaking	the 2007 Regulations exempts these vehicles from the requirement to have a tachograph.	
13(1)(c)	National derogation for agricultural tractors and forestry tractors used for agricultural or forestry activities, within a radius of up to 100 km from the base of the undertaking which owns, hires or leases the vehicle	Regulation 2(1)(a) and paragraph 3 of Part 1 of the Schedule of the 2007 Regulations implement this derogation. Regulation 4(1) of the 2007 Regulations exempts these vehicles from the requirement to have a tachograph.	Secretary of State
13(1)(d)	National derogations for vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7.5 tonnes used: - by universal service providers as defined in Article 2(13) of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service to deliver items as part of the universal service, or - for carrying materials, equipment or machinery for the driver's use in the course of their work. These vehicles shall be used only within a 50 km radius from the base of the undertaking, and on condition that driving the vehicles does not constitute the driver's main activity	Regulation 2(1)(b) of the 2007 Regulations implements this derogation in terms of vehicles used by universal service providers. These vehicles are not exempted from the requirement to have a tachograph fitted. Regulation 2(1)(a) and paragraph 4 of Part 1 of the Schedule of the 2007 Regulations implement this derogation in terms of vehicles used for carrying materials, equipment or machinery for the driver's use in the course of his work. Regulation 4(1) of the 2007 Regulations exempts these vehicles from the requirement to have a tachograph.	Secretary of State
13(1)(e)	National derogation for vehicles operating exclusively on islands not exceeding 2300 square	Regulation 2(1)(a) and paragraph 5 of Part 1 of the Schedule of the 2007 Regulations implement this	Secretary of State

	kilometres in area which are not linked to the rest of the national territory by a bridge, ford or tunnel open for use by motor vehicles	derogation. Regulation 4(1) exempts these vehicles from the requirement to have a tachograph.	
13(1)(f)	National derogation for vehicles used for the carriage of goods within a 50 km radius from the base of the undertaking and propelled by means of natural or liquefied gas or electricity, the maximum permissible mass of which, including the mass of a trailer or semi-trailer, does not exceed 7.5 tonnes	Regulation 2(1)(a) and paragraph 6 of Part 1 of the Schedule of the 2007 Regulations implement this derogation. Regulation 4(1) of the 2007 Regulations exempts these vehicles from the requirement to have a tachograph.	Secretary of State
13(1)(g)	National derogation for vehicles used for driving instruction and examination with a view to obtaining a driving licence or a certificate of professional competence, provided that they are not being used for the commercial carriage of goods or passengers	Regulation 2(1)(a) and paragraph 7 of Part 1 of the Schedule of the 2007 Regulations implement this derogation. Regulation 4(1) of the 2007 Regulations exempts these vehicles from the requirement to have a tachograph.	Secretary of State
13(1)(h)	National derogation for vehicles used in connection with sewerage, flood protection, water, gas and electricity maintenance services, road maintenance and control, door-to-door household refuse collection and disposal, telegraph and telephone services, radio and television broadcasting, and the detection of radio or television transmitters or receivers	Regulation 2(1)(a) and paragraph 8 of Part 1 of the Schedule of the 2007 Regulations implement this derogation. Regulation 4(1) of the 2007 Regulations exempts these vehicles from the requirement to have a tachograph.	Secretary of State
13(1)(i)	National derogation for vehicles with between 10 and 17 seats used exclusively for the non-commercial carriage of passengers	Regulation 2(1)(a) and paragraph 9 of Part 1 of the Schedule to the 2007 Regulations implement this derogation. Regulation 4(1) of the 2007 Regulations exempts these vehicles from the	Secretary of State

		requirement to have a tachograph.	
13(1)(j)	National derogation for specialised vehicles transporting circus and funfair equipment	Regulation 2(1)(a) and paragraph 10 of Part 1 of the Schedule of the 2007 Regulations implement this derogation. Regulation 4(1) of the 2007 Regulations exempts these vehicles from the requirement to have a tachograph.	Secretary of State
13(1)(k)	National derogation for specially fitted mobile project vehicles, the primary purpose of which is use as an educational facility when stationary	Regulation 2(1)(a) and paragraph 11 of Part 1 of the Schedule of the 2007 Regulations implement this derogation. Regulation 4(1) of the 2007 Regulations exempts these vehicles from the requirement to have a tachograph.	Secretary of State
13(1)(l)	National derogation for vehicles used for milk collection from farms and the return to farms of milk containers or milk products intended for animal feed	Regulation 2(1)(a) and paragraph 12 of Part 1 of the Schedule of the 2007 Regulations implement this derogation. Regulation 4(1) of the 2007 Regulations exempts these vehicles from the requirement to have a tachograph.	Secretary of State
13(1)(m)	National derogation for specialised vehicles transporting money and/or valuables	This derogation has not been adopted in Great Britain.	
13(1)(n)	National derogation for vehicles used for carrying animal waste or carcasses which are not intended for human consumption	Regulation 2(1)(a) and paragraph 13 of Part 1 of the Schedule of the 2007 Regulations implement this derogation. Regulation 4(1) of the 2007 Regulations exempts these vehicles from the requirement to have a tachograph.	Secretary of State
13(1)(o)	National derogation for vehicles used exclusively on roads inside hub facilities such as ports, interports and railway terminals	Regulation 2(1)(a) and paragraph 14 of Part 1 of the Schedule of the 2007 Regulations implement this derogation. Regulation 4(1) of the 2007 Regulations exempts these vehicles from the requirement to have a tachograph.	Secretary of State

13(1)(p)	National derogation for vehicles used for the carriage of live animals from farms to local markets and vice versa or from markets to local slaughterhouses within a radius of up to 50 km	Regulation 2(1)(a) and paragraph 15 of Part 1 of the Schedule of the 2007 Regulations implement this derogation. Regulation 4(1) of the 2007 Regulations exempts these vehicles from the requirement to have a tachograph.	Secretary of State
14(1)	Exceptions from the application of Articles 6 to 9 to transport operations carried out in exceptional circumstances	The 2007 Regulations continue to exempt certain operations that were exempted after a special authorisation was granted by the European Commission in 1987 for: • any vehicle which is being used by the Royal National Lifeboat Institution. This exception is implemented by regulation 2(2) and paragraph 16 of Part 2 of the 2007 Regulations. Regulation 4(2)(a) of the 2007 Regulations exempts these vehicles from the requirement to have a tachograph; • any vehicle which was manufactured before 1 January 1947. This exception is implemented by regulation 2(2) and paragraph 17 of Part 2 of the 2007 Regulations. Regulation 4(2)(a) of the 2007 Regulations exempts these vehicles from the requirement to have a tachograph; • any vehicle which is propelled by steam. This exception is implemented by regulation 2(2) and paragraph 18 of Part 2 of the 2007 Regulations. Regulation 4(2)(a) of the 2007 Regulations exempts these vehicles from the requirement to have a tachograph; • any vehicle which is being	Secretary of State

		used to collect sea coal from the requirement to use a tachograph (but not from the drivers' hours rules themselves). Regulation 4(2)(b) of the 2007 Regulations exempts these vehicles from the requirement to have a tachograph.	
15	Protection for drivers operating on vehicles used for the carriage of passengers on regular services where the route covered does not exceed 50km	Such drivers are subject to domestic drivers' hours rules set out in Part VI of the Transport Act 1968, as amended.	Secretary of State
19(1)	Member States shall lay down rules on penalties applicable to infringements of this Regulation and Regulation (EEC) No 3821/85	These are already set out in Part VI of the Transport Act 1968, as amended. Regulation 5, 6 and 8(a) of the 2007 Regulations updates the references to the EU Regulation in sections 95 and 103 of the Transport Act 1968, as amended.	Secretary of State. Enforced by VOSA and the police
19(2)	Imposition of penalties for offences committed outside the UK	Regulation 7(a)(i) of the 2007 Regulations implements this requirement by amending section 96 of the Transport Act 1968, as amended.	Secretary of State. Enforced by VOSA and the police
19(4)	Ensuring the imposition of penalties is in force for infringements of Regulation EC No 561/2006 or Regulation EEC No 3821/85 on the part of undertakings, or associated consignors, freight forwarders, tour operators, principal contractors, subcontractors and driver employment agencies.	Regulation 7(c) of the 2007 Regulations implements this requirement by amending section 96 of the Transport Act 1968, as amended.	Secretary of State. Enforced by VOSA and the police

ANNEX B

SCRUTINY HISTORY

1. The original proposal for a new EU Regulation on drivers' hours was the subject of Explanatory Memorandum (EM) No. 12934/01 which was submitted with a Regulatory Impact Assessment by the Department on 21st November 2001. The House of Commons European Scrutiny Committee considered the EM on 6th February 2002 (18th Report, session 2001-2002, 22856). The Committee recommended that the document was of legal and political importance and requested further information following the consultation. A Ministerial letter was sent on 30th July 2002, which the Committee considered on 16th October 2002 (Report 38) and cleared the document. A further Ministerial letter was sent on 1st April 2003 to report on the outcome of the European Parliament's First Reading.

2. The House of Lords Select Committee on the European Union referred the EM to sub Committee B at the 1083rd sift on 27th November 2001. The Chairman wrote to the Minister on 4 December 2001 requesting further information following the consultation. A Ministerial letter was sent on 8th January 2002 in response to some of the Committee's queries (Chairman's reply of 22nd January 2002), and on 30th July with the outcome of the consultation. The document was cleared by letter to the Minister on 22nd October 2002. A further Ministerial letter was sent on 1st April 2003 to report on the outcome of the European Parliament's First Reading. The Chairman replied on 10th April 2003.

3. An amended proposal for a new EU Regulation, incorporating some of the European Parliament's first reading amendments to the original proposal, was the subject of EM 12168/03. The House of Commons European Scrutiny Committee considered the EM on 29th October 2003 (35th Report, session 2002-2003, 24843), recommended that the document was of political importance and did not clear it pending further information. A Ministerial letter was sent on 24th February 2004. The Committee considered this on 25th February 2004 and cleared the document (11th Report, session 03/04). The House of Lords Select Committee on the European Union referred the EM to sub Committee B at the 1155th sift of 14th October 2003. The document was cleared by a letter to the Minister on 20th November 2003.

4. On 9th June 2005, the Department wrote to the Committees advising that the European Parliament had, at 2nd Reading, requested 43 amendments to the Regulation on drivers' hours. The Transport Council was unable to accept the majority of these amendments, so the proposal had to be taken forward using the formal conciliation process. The Secretary of State's pre-Presidency letter of 18th July to both Committees noted that Derek Twigg would take the lead for the Presidency in the conciliation negotiations.

5. On 18th November 2005, the Department wrote to the Committees to advise on progress of the proposal in conciliation. This was followed by a letter dated 19th December 2005 informing the Committees of the successful outcome of the formal conciliation meeting in Brussels on 6th December.

6. Other than the numbered EMs there have been no depositable texts until the issue of the joint text in January 2006.

ANNEX C

REGULATORY IMPACT ASSESSMENT

1. Title of proposal

1.1 The Community Drivers' Hours and Recording Equipment Regulations 2007 (hereafter referred to as "these Regulations").

2. Purpose and intended effect

Objective

2.1 These Regulations will facilitate compliance with, and enforcement of, various provisions of the new, directly applicable, European Regulation on drivers' hours (Regulation (EC) No. 561/2006 - hereafter referred to as the "new EU Regulation"), which will enter fully into force on 11th April 2007[1].

Background

2.2 Since 1986, directly applicable European drivers' hours rules (Council Regulation (EEC) No. 3820/85 - which will be repealed by the new EU Regulation) have prescribed maximum limits on driving time and minimum limits for breaks and rest periods for most HGV drivers and about half the bus and coach drivers in the UK.

2.3 On 17th October 2001 the European Commission published a proposal for a new EU Regulation on drivers' hours to clarify and simplify the existing legislation, make it easier to enforce and update and remove outdated exemptions. The Department for Transport consulted widely on this proposal in December 2001, and the UK's negotiating position took into account the consultation responses received. But it was not until December 2005 that the Conciliation Committee of the European Parliament and of the Transport Council, under the UK Presidency, finally agreed a joint text. This text was published in the Official Journal of the European Union on 11th April 2006.

2.4 The financial implications of the new EU Regulation were assessed in some detail in the Explanatory Memorandums and accompanying Regulatory Impact Assessment that the Department for Transport prepared for the Parliamentary Scrutiny Committees prior to adoption of the final text.

2.5 Whilst there is no need to replicate all the EU provisions in domestic legislation, these Regulations are necessary to make changes to existing domestic legislation in order to comply with the new requirements. They will put in place new enforcement provisions; define "historic" status (for the purpose of a new automatic exemption); and implement those discretionary national derogations that are to be adopted in Great Britain (these exempt certain vehicles from the new EU Regulation). Similar, but separate, arrangements will be required for Northern Ireland (see paragraph 3.2). If

[1] Certain requirements relating to tachographs came into force on 1st May 2006, 20 days after the publication of the new EU Regulation in the Official Journal of the European Union.

these changes were not made to domestic legislation, the UK would be in breach of the Treaty establishing the European Community, and would undoubtedly be forced to comply through the infraction process.

3. Consultation

Within Government

3.1 In developing these Regulations the Department for Transport worked closely with the Vehicle and Operator Services Agency (VOSA), which is the main body responsible for enforcing the EU drivers' hours rules in Great Britain.

3.2 The new EU Regulation is a transferred matter in respect of Northern Ireland and the relevant Northern Ireland Departments are preparing separate legislation and enforcement arrangements. For the rest of the UK, the new EU Regulation is a reserved matter, handled by the Department for Transport. Nevertheless, the Department consulted with the devolved administrations in Scotland and Wales when working-up the policy principles behind these Regulations.

Public consultation

3.3 The Department for Transport carried out a public consultation on the proposed changes to domestic legislation required in order to facilitate compliance with the new EU Regulation. The 12 week consultation period began on 26th October 2006 and concluded on 17th January 2007. The consultation document was sent direct to over 270 consultees and was also published on the Department's website. Sixty-two responses were received. An analysis of the responses was completed and consultees views were taken into consideration when finalising these Regulations (and this Regulatory Impact Assessment). A copy of the consultation report is available on the Department's website at www.dft.gov.uk.

3.4 The main issues on which views were sought were the proposed approaches to the:

- new enforcement measures and the penalties to be applied;
- definition of "historic vehicle" for the purposes of applying a new automatic exemption from the EU drivers' hours rules; and
- adoption of national derogations.

3.5 In terms of the new enforcement provisions proposed in the consultation document, the means of dealing with the automatic liability of transport undertakings for infringements committed by their drivers, and the option to make this liability conditional, proved to be the most contentious.

3.6 The majority of respondents thought that it would be more appropriate to have a defence that mirrored the wording in Article 10.3 of the new EU Regulation. Consequently, a defence will be adopted that requires a transport undertaking to prove that it has not infringed provisions on pay, organising work, driver instruction and regular checks under Articles 10.1 and 10.2 of the new EU Regulation, as well as having to

establish that it could not reasonably be held responsible for the infringements committed by the driver.

3.7 Most respondents agreed with the proposed penalty structure in respect of the new offence and so these will be implemented as proposed.

3.8 On the definition of "historic vehicle" for the purpose of the new automatic exemption for non-commercially operated historic vehicles, the majority of respondents thought that the restrictions proposed were particularly onerous. In view of the case put forward by the historic vehicle fraternity, which was supported by VOSA, the definition of a historic vehicle will be simplified in this context as one which was manufactured more than 25 years before the occasion on which it is being driven.

3.9 Generally speaking, the proposals in the consultation document for implementing the national derogations were considered to be acceptable by most respondents. Some respondents requested confirmation on how certain aspects of the national derogations would be applied and interpreted, and this will be provided separately in guidance.

3.10 A few respondents expressed concern about those current national derogations (and exemptions) which will no longer be available, and about those which will have new conditions attached to them under the new EU Regulation. To accommodate these concerns it would be necessary to amend the new EU Regulation itself and there is no scope for doing so.

4. Options

Background

4.1 This RIA considers options for:-

- the changes that are required to ensure the effective enforcement of the new EU Regulation (including a requirement to define the scope of a new blanket exemption for historic vehicles); and
- the adoption of the discretionary national derogations available under the new EU Regulation.

4.2 The impact of the new EU Regulation itself was looked at in the Explanatory Memorandums and accompanying Regulatory Impact Assessment that the Department for Transport prepared when the new EU Regulation was being negotiated. This RIA, therefore, only looks at the impact of the changes to be made to domestic legislation in order to comply with the new EU Regulation.

New enforcement measures and the scope of the new blanket exemption for historic vehicles

Option 1: Do nothing

4.3 If these Regulations were not made:

- VOSA would be unable to enforce the new EU Regulation effectively. Levels of compliance with the EU drivers' hours rules would inevitably decrease, which would have a negative impact on road safety because fatigue leads to a higher incidence of traffic accidents; and
- the drivers of historic vehicles used for the non-commercial carriage of passengers or goods would not be able to take advantage of the automatic exemption provided in the new EU Regulation as the term "historic vehicle" would not be defined in domestic legislation.

4.4 It is a requirement of Community law that EU legislation is implemented (or, as in this case, compliance is properly facilitated) in an effective, timely and proportionate manner. If the UK failed to comply, the European Commission would undoubtedly force the UK to comply through the infraction process. The UK's reputation would also be damaged as a result of non-compliance.

4.5 The do nothing option is not a realistic option, denying as it would the UK's legal obligations, damaging the UK's reputation and leading to breaches of the new EU Regulation which could jeopardise road safety.

Option 2: Make adequate provision for the new enforcement measures and define the scope of the new historic vehicle exemption.

4.6 The Department's preferred option. This would fulfil the UK's obligations under Community law and would ensure that VOSA had the necessary powers to enforce the new EU Regulation so that road safety was not compromised. It would also ensure that the parameters of the new blanket historic vehicle exemption were clearly defined in domestic law.

Adoption of the discretionary national derogations

Option 1: Implement none of the national derogations

4.7 For the most part, the discretionary national derogations available under the new EU Regulation replicate derogations available in one form or another under the existing EU drivers' hours rules. Where, and to the extent that, national derogations are exercised, operations involving the vehicles in question are exempt from the EU drivers' hours rules. The UK exercised all of the derogations available under the existing EU drivers' hours rules. If none of the derogations available under the new EU Regulation were exercised it would, in effect, bring large numbers of drivers and operators not currently subject to the EU drivers' hours rules into scope (at considerable cost to industry).

4.8 Non implementation would also be at odds with the position the Department for Transport took during the public consultation exercise and during negotiations in Brussels. It would be contrary to ongoing de-regulatory initiatives, and could also place certain operators at a distinct competitive disadvantage compared to their foreign competitors. By effectively widening the scope of the EU drivers' hours rules (through non implementation of national derogations), the operations concerned would also be brought within the scope of the separate European road transport working time legislation.

Option 2: Selective implementation of the national derogations - implement all of the national derogations apart from the one for "specialised vehicles transporting money and/or valuables"

4.9 The Department's preferred option. Of the sixteen national derogations available in the new EU Regulation, only the national derogation for specialised vehicles transporting money and/or valuables is completely new. Of the rest, three have moved from being automatic exemptions (utility vehicles, milk collection vehicles and vehicles transporting circus and funfair equipment), while the remaining twelve are largely based on the national derogations available in the existing EU drivers' hours rules.

4.10 Nothing has changed to warrant non-implementation of those national derogations which are based on existing exemptions or national derogations. There is, however, no obvious case for adopting the new derogation for specialised vehicles transporting money and/or valuables. The wording is too broad (for example, there is no definition of what constitutes "money and/or valuables") and this sector is currently operating within the scope of the existing EU drivers' hours rules without any apparent difficulties.

4.11 There is no obligation on the UK to exercise all of the available national derogations, or to implement them in full.

Option 3: Implement all of the national derogations

4.12 As explained above, there is no reason why the newly available national derogation for specialised vehicles transporting money and/or valuables should be adopted given that this sector is currently operating within the scope of the existing EU drivers' hours rules without any apparent difficulties.

5. Costs and benefits

Sectors and groups affected

5.1 These Regulations will primarily affect those drivers' and operators working in the road freight and inter-urban road passenger transport sectors, who are subject to the new EU Regulation. The historic vehicle fraternity also have an interest in terms of whether the definition of a "historic vehicle" will exempt the vehicles that they operate. VOSA and the police who have responsibility for enforcing the requirements of the EU drivers' hours rules will also be affected.

5.2 Many different types of organisations and individuals are involved in road freight and passenger transport, including voluntary organisations, charities, the public sector (e.g. local authorities) and people from different backgrounds, including people from different racial groups and ethnic minorities. The legislation should not have a disproportionate impact on any particular type of organisation or groups of individuals and it will not have any impact on race or disability equality.

5.3 The expected costs and benefits are considered below.

New enforcement measures and the scope of the new exemption for historic vehicles

Benefits

5.4 The new EU Regulation is intended to bring both social and economic benefits by promoting road safety, improving working conditions for drivers, and helping ensure fair competition across the EU.

5.5 Law abiding companies suffer unfair competition from operators that flout the rules. These Regulations will help ensure that VOSA and the police are able to effectively enforce the requirements of the new EU Regulation. The historic vehicle fraternity will be able to take advantage of the exemption for "historic vehicles", for instance allowing them to participate in educational events and shows for members of the public and the local community.

5.6 No environmental benefits have been identified.

Costs

5.7 There should be no significant additional costs for law abiding operators and drivers. There are general costs for operators associated with enforcement, but these are already incurred under the existing EU drivers' hours rules. Defining the scope of the "historic vehicle" does not place any additional administrative burdens on operators.

5.8 These Regulations themselves should not result in increased costs for VOSA or the police. There should not be an increase in Court activity either as the capacity of enforcement agencies to pursue prosecutions is limited by their finite resources.

5.9 There are no social or environmental costs identified.

National derogations

Benefits

5.10 The adoption of all but one of the discretionary national derogations available in the new EU Regulation will, in effect, mean that the existing scope of the EU drivers' hours rules, as they apply in this country, will remain virtually unchanged. Therefore, it is not anticipated that there will be any additional social or economic benefits.

5.11 No environmental benefits have been identified.

Costs

5.12 Again, the adoption of all but one of the discretionary national derogations will, in effect, mean that the existing position remains virtually unchanged. So there should be no significant extra costs for industry, or any new social costs. The preferred option for implementing the discretionary derogations will not place any additional administrative burden on operators.

5.13 There are no environmental costs identified.

6. Small Firms Impact Test

6.1 As set out in paragraph 3.3, a consultation document was issued in October 2006. There were no responses to the consultation paper from any companies specifically identifying themselves as a small business. However, a number of trade associations responded, including those which have small firms as members. Some respondents commented on the impact on individuals and small businesses of the extra cost of fitting tachographs to those vehicles that will no longer be exempt from the EU drivers' hours rules. However, as mentioned earlier this is enshrined in the new EU Regulation itself and is not an outcome of the Department's preferred option for facilitating compliance. As explained in paragraph 4.2, the impact of the new EU Regulation itself is not covered in this RIA.

6.2 One consultation respondent, representing small and medium sized businesses, argued that by maintaining the *status quo* (i.e. adopting all but one of the available national derogations), its members who remained in scope of the new EU Regulation would continue to suffer a distinct competitive disadvantage in the national market. However, as set out in paragraphs 4.7 and 4.8, if none of the national derogations were adopted it would place new costs on a large number of drivers and businesses not currently in scope of the EU drivers' hours rules.

6.3 Since to all intents and purposes the *status quo* has been maintained, as far as possible, these Regulations should not have a significant or disproportionate affect on small businesses.

7. Competition assessment

7.1 These Regulations will primarily affect the road haulage sector but also the inter-urban road passenger transport sector.

7.2 The road haulage industry is an open and very competitive market. A large number of firms compete to offer road haulage services. In addition, many firms operate their own in-house road distribution. In total 101,857 firms are licensed to operate road goods vehicles. While a few firms operate a large number of vehicles and handle a proportionately greater share of demand, their market power is effectively constrained by competition.

7.3 The bus industry is dominated by five large companies; First, Arriva, Stage Coach, Go-Ahead and National Express. National Express also dominates the national coach market. In terms of international coach operations, a number of smaller companies compete to provide these services.

7.4 The new EU Regulation will apply in all EU Member States and should not therefore adversely affect the relative position of British companies compared to similar operations elsewhere in the EU. These Regulations are not expected to have a significant impact on the costs of law abiding businesses in general or have any disproportionate cost impact on any law abiding sector of the industry. Therefore, the structure of competition in the road freight and inter-urban road passenger transport sectors should not be affected.

7.5 In addition, the effective enforcement of the new EU Regulation will enhance the operation of the market by ensuring there is a level playing field that prevents law-abiding firms suffering from unfair competition (e.g. from operators/drivers that work excessive hours).

8. Enforcement, sanctions and monitoring

8.1 These Regulations relate directly to enforcement and to sanctions for non compliance with the new EU Regulation. They will not in themselves introduce new rules that need to be enforced because the new EU Regulation will be directly applicable. Existing enforcement activity takes the form of roadside checks and compliance audits at operators' premises (which will continue). Both of these activities are targeted against those operators considered to pose the greatest risk to road safety. The Department for Transport maintains close contacts with enforcement agencies who keep it informed of the effectiveness of the enforcement regime.

8.2 The sanctions for breaches of the new enforcement measures will be consistent with the existing level of penalties for existing drivers' hours offences. In future it is intended that the Graduated Fixed Penalty and Deposit Scheme will apply where the EU drivers' hours rules are enforced at the roadside in Great Britain. The exact details of the scheme are still being finalised.

9. Implementation and delivery plan

9.1 These Regulations are necessary to facilitate compliance with the new, directly applicable, EU Regulation on drivers' hours. Subject to Parliamentary scrutiny, it is intended that these Regulations will come into force on the same date as the new EU Regulation comes fully into force - 11th April 2007. All those stakeholders who responded to the consultation exercise will be informed when these Regulations have been laid and from where they can obtain a copy.

9.2 These Regulations will give effect to a number of exemptions from the new EU Regulation for certain types of activities, depending on the nature of the operation and in some cases the distance traveled. Businesses / organisations will be able to take advantage of these exemptions as soon as these Regulations come into force. With regard to enforcement provisions, the Department will continue to work closely with VOSA to ensure that they have adequate powers to effectively enforce the EU drivers' hours rules and to ensure that no loop holes have been inadvertently created.

9.3 VOSA already has the resources to enforce the requirements of the new EU Regulation through its existing Traffic Examiners. VOSA has in hand training for its Traffic Examiners to ensure that they will have a full understanding of how to effectively identify breaches of the new EU Regulation when it comes fully into force. A separate European Enforcement Directive (2006/22/EC) specifies the minimum level of drivers' hours enforcement checks that must be carried out and the percentage of such checks that must be completed at the roadside and at operators' premises. It will be possible to tell if VOSA can effectively enforce the new EU Regulation by whether it meets the required enforcement levels set in the Enforcement Directive.

9.4 The new EU Regulation was published in the Official Journal of the European Union on 11th April 2006 and a link to it placed on the Department for Transport's website. In December 2006 VOSA published revised guidance on the drivers' hours and tachograph rules for both passenger and goods vehicle drivers, which set out the changes being introduced by the new EU Regulation. VOSA also produced a wall chart summarising the new rules and the main changes to the scope of the EU drivers' hours rules. This was circulated in February 2007 to those operators who receive VOSA's monthly newsletter "Moving On" and it was also made available at VOSA's twenty-three Area offices.

9.5 Operators already have to keep tachograph records for a year and there will be no change under the new EU Regulation. Vehicles which were exempt from the requirement to have a tachograph under Council Regulation (EEC) 3820/85, but which are no longer exempt under the new EU Regulation will have until 31st December 2007 to get a tachograph fitted.

10. Post-implementation review

10.1 The effectiveness of the drivers' hours enforcement regime will be kept under review in the light of practical experience following the introduction of the new EU Regulation in April 2007. VOSA, as the main body responsible for enforcing the EU drivers' hours rules, will have an important role to play in identifying whether enforcement measures are sufficient. Consideration will also be given to whether the adopted national derogations have caused any unforeseen or unintended loopholes that need to be closed.

10.2 A "sunset clause" is not appropriate in this instance as these Regulations facilitate compliance with a new EU Regulation and the obligations that they create are intended to be ongoing.

11. Summary and recommendation

11.1 Based on the analysis of costs and benefits above and the consultation responses received, the Department recommends that:

- for the new enforcement measures and the scope of the new blanket exemption for historic vehicles that option 2 is adopted (see paragraph 4.6 above);
- for the adoption of the discretionary national derogations that option 2 is adopted (see paragraphs 4.9 to 4.11 above); and
- that these Regulations are laid before Parliament (for affirmative resolution).

11.2 This will:-

- enable VOSA and the police to continue to take effective enforcement action against drivers and operators who breach the EU drivers' hours rules;
- provide owners of historic vehicles with clarity over whether they can take advantage of the automatic exemption for historic vehicles used for non-commercial carriage of passengers and goods; and
- allow operators and drivers to take advantage of those national derogations being adopted.

Summary costs and benefits table

Option	Total benefit per annum: economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
New enforcement measures and the scope of the new blanket exemption for historic vehicles		
1	Nil.	Unquantifiable - but would expect to lead to an increase in road accidents and open up the UK Government to the risk of infraction proceedings.
2	Unquantifiable - should help prevent unfair competition.	Nil.
Adoption of the discretionary national derogations		
1	Unquantifiable - possible improvement in road safety and working conditions for some drivers.	Significant - as it would bring a large number of drivers and businesses into scope of both the EU drivers' hours rules *and* the separate EU road transport working time legislation.
2	Nil.	Nil - as effectively retaining the status quo.
3	Nil.	Unquantifiable - but could lead to a small increase in road traffic accidents.

12. Declaration and publication (to be completed after consultation)

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed S. J. Ladyman… 6 March 2007

Dr Stephen Ladyman
Minister of State for Transport
Department for Transport

Contact point for enquires and comments:
Andrew Angel, Logistics Policy Division, Department for Transport, Zone 1/18 Great Minster House, 76 Marsham Street, London SW1P 4DR Tel: 020 7944 2752 or e-mail: andrew.angel@dft.gsi.gov.uk