EXPLANATORY MEMORANDUM TO

THE DRIVERS' HOURS AND TACHOGRAPHS (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 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 Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument uses existing powers under the European Communities Act 1972 ("the ECA") to fully implement the obligations of the United Kingdom (UK) under European Union law in the field of drivers' hours and tachographs for the carriage of goods and passengers by road and under the European Agreement concerning the Work of Crews of Vehicles engaged in the International Road Transport of 1 July 1970, as amended ("the AETR"), which must be addressed before the point at which the UK leaves the European Union (EU) ("Exit Day"). The obligations being implemented are further set out in sections 6 and 7 of this document.

2.2 This instrument remedies deficiencies in domestic law and retained EU law arising from the withdrawal of the UK from the EU, in the field of drivers' hours and tachographs. In particular it reflects the fact that the AETR will be the relevant international legal framework for road transport operations between the UK and the EU from Exit Day.

Explanations

What did any relevant EU law do before exit day?

2.3 Regulation (EC) No. 561/2006 ("the EU Drivers' Hours Regulation") specifies EU-wide drivers' hours rules. Under this Regulation, 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). The rules are intended to help protect road safety and driver welfare.

2.4 The drivers' hours rules are enforced through the inspection of tachographs by the Driver and Vehicle Standards Agency and the police. 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 Tachograph Regulation") specifies the rules relating to the construction, installation, use, testing and control of tachographs.

2.5 The EU Drivers' Hours Regulation and the EU Tachograph Regulation (together, "the EU Regulations") apply to road transport operations undertaken wholly within the EU, EEA and Switzerland. For operations starting, ending or passing through a country outside the EU, EEA or Switzerland, the rules set out in the AETR apply instead, provided that that country is a Contracting Party to the AETR. The AETR is a

United Nations Economic Commission for Europe (UNECE) Agreement and the UK, the 27 EU Member States, and a further 21 countries (including EEA Member States Norway and Lichtenstein, but not Iceland), are Contracting Parties to it.

Why is it being changed?

2.6 The changes are designed to ensure that the existing regulatory regime for drivers' hours and tachographs remains effective from Exit Day. In the absence of these amendments, some of this legislation, which was drafted in the context of the UK's membership of the EU, would either lack clarity or fail to operate effectively after Exit Day. This would cause issues in terms of accessibility and usability, and could put the enforceability of the regime in doubt. This would mean that following EU Exit there would be no effective system in place to control maximum driving times and minimum rest times for drivers of commercial vehicles, raising serious road safety risks and placing the UK in breach of its international obligations under the AETR.

2.7 A summary of the changes which are being made to the current legislation is below:

a) Amendments are being made to domestic implementing provisions for the EU Regulations and the AETR, to ensure that these regulatory regimes have been fully implemented in the UK prior to Exit. In particular, this includes amendments to criminal offences in relation to the use of tachographs under the AETR and the type approval of tachographs;

b) Amendments are being made to restate retained EU law in a clearer and more accessible way, such as omitting any unnecessary definitions;

c) References which relate to the UK as an EU Member State are being replaced, in order to ensure that existing regulatory requirements continue to apply within the UK when it is no longer an EU Member State;

d) Inappropriate arrangements, including where the European Commission currently has a decision-making role, are being amended or omitted, to reflect the fact that the UK will no longer be an EU Member State;

e) Obligations and arrangements which will cease to operate effectively following EU Exit, such as requirements to provide information to the Commission, are being removed.

2.8 The changes being made to legislation are designed to maintain the existing system for the road transport industry following the UK's withdrawal from the EU.

What will it now do?

2.9 The rules relating to drivers' hours and tachographs will remain the same for road transport operations undertaken exclusively within the United Kingdom. This ensures that drivers of large goods and passenger vehicles will continue to be subject to the same driving times, breaks and rest periods as before Exit Day. The same tachograph requirements that exist before Exit Day will also apply after Exit Day. The rules on drivers' hours and tachographs for these UK-only operations, which do not change, will be set out in the retained domestic versions of the EU Regulations from Exit Day ("retained EU law").

2.10 EU law will no longer apply to international road transport operations between the UK and EU Member States, Switzerland, or non-EU EEA Member States. This instrument therefore ensures that the AETR rules, which are the rules that apply

internationally, will apply in respect of operations to these countries instead of the EU Regulations after Exit Day. As the EU Regulations and the AETR contain the same rules, international road transport operations will be subject to the same drivers' hours and tachographs requirements from Exit Day as before Exit Day.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Regulation 81 of this instrument substitutes Chapter 3 of the EU Tachograph Regulation with another version of Chapter 3. Pursuant to section 3(2)(a)(iii) of the European Union (Withdrawal) Act 2018 ("the EU Withdrawal Act"), EU Regulations only form part of domestic law by virtue of that Act so far as they are operative immediately before Exit Day. However, many of the provisions of the EU Tachograph Regulation have been reproduced in the Motor Vehicles (Type Approval) Regulations 1980, and to that extent those provisions are not retained in domestic law by the EU Withdrawal Act. The restated Chapter 3 omits certain provisions which are no longer appropriate after Exit Day, or where equivalent provision has been made elsewhere in this instrument.

The Articles which are included and re-stated in the new Chapter are as follows (with the new heading provided):

(a) Article 11A (Requirement for UK or EU type-approval);

(b) Article 12 (Applications for UK type-approval: certificates);

(c) Article 17 (Approval of record sheets);

(d) Article 20 (Security);

(e) Article 21 (Field tests).

The remainder of Chapter 3 is dealt with as follows:

(a) for Article 13 (Granting of type-approval), relevant provision is contained in regulation 5 of the Motor Vehicles (Type Approval) Regulations 1980;

(b) for Article 14 (Type-approval marks), relevant provision is contained in regulation 8 of the 1980 Regulations;

(c) Article 15 (Approval or refusal) is omitted;

(d) for Article 16 (Compliance of equipment with type-approval), relevant provision is contained in regulations 12 and newly inserted 12A of the 1980 Regulations;

(e) Article 18 (Justification of refusal decisions) is omitted;

(f) Article 19 (Recognition of type-approved tachographs) is omitted.

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 The territorial application of this instrument varies between provisions.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see the preamble to the ECA and section 24 of the EU Withdrawal Act). 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, Scotland and Northern Ireland for:

(a) Part 1 (introduction);

(b) Part 2, Chapter 2, regulations 21 and 23 (amendments pursuant to the ECA which make UK-wide amendments to secondary legislation);

(c) Part 3, Chapter 2, regulation 49 (amendments pursuant to the EU Withdrawal Act which make UK-wide amendments to secondary legislation);

(d) Part 3, Chapter 3 (amendments to retained direct EU legislation);

(e) Part 4 (saving).

Except for the regulations referred to above, Part 2 and Part 3, Chapters 1 and 2 (amendments pursuant to the ECA and EU Withdrawal Act which amend domestic legislation) extend to England and Wales and Scotland.

4.2 The territorial application of this instrument is the same as the territorial extent of this instrument, as set out above.

4.3 Although the subject matter of this instrument is transferred to Northern Ireland, this instrument extends to Northern Ireland where it amends retained direct EU law, in agreement with the Northern Ireland Department for Infrastructure. Amendments to Northern Ireland domestic legislation will be made in a separate instrument.

5. European Convention on Human Rights

5.1 Jesse Norman, Minister of State, has made the following statement regarding Human Rights:

"In my view the provisions of the Drivers' Hours and Tachographs (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the European Convention on Human Rights."

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 more than 9 seats (including the driver's), 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. These prescribed limits on driving are commonly referred to as the "EU drivers' hours rules". Similar provisions are in force for most of the exempted large vehicles (including most buses) and are commonly referred to as "domestic drivers' hours rules".

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 rules. 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. These requirements are commonly referred to as "the EU tachograph rules".

6.3 In both EU Regulations it was left to Member States to adopt measures to enforce the drivers' hours and tachograph rules. Various pieces of UK legislation were amended

to provide for criminal sanctions for breaches of the EU drivers' hours rules and EU tachograph rules. Sections 95 to 103 of the Transport Act 1968 comprise the main piece of domestic legislation in this area. There is also subordinate legislation which relates to drivers' hours and tachographs, such as the Community Drivers' Hours and Recording Equipment Regulations 2007.

6.4 On consideration of these pieces of UK legislation in preparation for the UK's withdrawal from the EU, it became apparent that new provisions are needed to fully implement the existing provisions of the EU Regulations and the AETR.

6.5 Part 2 of this instrument contains those provisions. This Part creates three new offences and amends two existing offences to ensure that there are adequate enforcement provisions in relation to the type-approval, installation and use of tachographs, as well as updating existing related provisions which set out penalties or contain a list of related offences. This Part clarifies whether it is EU law or the AETR that the enforcement provisions relate to, implements an AETR exemption into domestic law, and includes defences to a breach of EU law or the AETR. The instrument also uses these powers to update out-of-date references to EU and domestic law, and out-of-date references to approval marks required by EU instruments. To ensure full compliance with EU law, a domestic instrument is updated to provide that the Secretary of State is the competent authority in Great Britain for the approval of recording equipment, rather than (at present) simply for checking and inspecting such equipment. In particular:

(a) The Transport Act 1968 is amended to make explicit reference to the AETR. For example, section 96 of that Act is amended to include a defence to the offence of breaching the requirements of the AETR. The defence provides that a person may not be charged for breaching AETR requirements if that person can prove compliance with Article 11(1) to (3) of the AETR, and all reasonable precautions were taken to avoid the breach. The existing defence in relation to the Drivers' Hours Regulation in section 96(11B) is amended to clarify that it relates to that Regulation (rather than the AETR).

(b) Section 96(11C) sets out the offence of failing to take all reasonable steps to comply with the requirement under Article 10(4) of the EU Drivers' Hours Regulation (undertakings etc to ensure that contractually agreed transport time schedules respect that Regulation). This instrument extends that offence to a person who is subject to the equivalent requirement imposed by Article 11(5) of the AETR, that is, to ensure that contractually agreed transport time schedules respect the AETR.

(c) Section 97 of the Transport Act 1968 sets out the offence of failing to install and use recording equipment in accordance with the EU Tachograph Regulation, read with the EU Drivers' Hours Regulation. It is amended to make clearer that this offence relates to breaches of EU legislation, and a new section 97ZA is inserted to create the equivalent offence of failing to install and use recording equipment in accordance with the AETR.

(d) The Transport Act 1968 is amended to include two other offences, as sections 97ZB and 97ZC, of supplying recording equipment which is not type-approved, and failing to inform the Secretary of State where a manufacturer of recording equipment system elements is aware of security vulnerabilities in elements on the market. These are more fully set out in section 7 of this document.

(e) This instrument amends the Road Traffic Offenders Act 1988 to insert the new offence in section 97ZA of the Transport Act 1968 into Schedule 3 as a fixed penalty offence. This instrument also amends the Fixed Penalty Order 2000, the Road Safety (Financial Penalty Deposit) Order 2009 and the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009 to reflect the new offence contained in section 97ZA.

(f) This instrument amends the list of approval marks required by EU instruments as set out in the Motor Vehicles (Designation of Approval Marks) Regulations 1979, to update the description of the part to which the marking relates and the place where the mark is applied in the table in Schedule 4. New item 3A covers the EU Drivers' Hours Regulation so far as it applies to the AETR. These have effect as if made under section 80 of the Road Traffic Act 1988. Section 80(2) of that Act, which sets out the offence of applying a mark without authority, is extended to cover the new mark.

(g) Regulation 4(1)(b) of the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979 is amended so that the Secretary of State is the competent authority in Great Britain for the approval of recording equipment.

(h) The Motor Vehicles (Tests) Regulations 1981, the Road Transport (Working Time) Regulations 2005 and the Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card Fees) Regulations 2005 are amended to update out-of-date definitions. For example, in the latter Regulations, a reference in regulation 3(2)(a)(i) to Commission Regulation (EEC) No 3820/85 is replaced by a reference to the EU Drivers' Hours Regulation.

(i) The Motor Vehicles (Type Approval) Regulations 1980 are also amended to update out-of-date references, and to remove references to Community Directives. New regulation 12A provides for the Secretary of State to revoke type-approval where the product has a general defect or if it no longer conforms with the type-approval requirements. The definition of "type-approval requirements" in the 1980 Regulations is amended so that requirements in the AETR are caught by this section.

(j) Regulation 3 of the Community Drivers' Hours and Recording Equipment Regulations 2007 exempts from the requirements of the EU Drivers' Hours Regulation vehicles with a historic status. This instrument amends this regulation so that this exemption equally applies for the purposes of the AETR.

6.6 On Exit Day, the EU Withdrawal Act makes provision for repealing the ECA and will preserve EU law, as it stands at the moment of exit, 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 power to make secondary legislation to enable Ministers and the devolved administrations to deal with deficiencies in retained EU law, to ensure that the UK's legal system continues to function properly outside the EU. The EU Withdrawal Act does not preserve EU directives. Changes made using powers under the EU Withdrawal Act are therefore made to the relevant legislation which implements an EU directive in the UK.

6.7 The above means that the EU Regulations will be retained EU law under the EU Withdrawal Act. The effect of this is that the EU drivers' hours and tachograph rules

will continue to apply, but this will create a number of deficiencies in the current drafting of domestic legislation and in the EU Regulations themselves. Part 3 of this instrument corrects those deficiencies using powers under the EU Withdrawal Act.

6.8 One important deficiency in UK law arising from EU withdrawal relates to the application of the AETR in domestic law. Upon leaving the EU, the UK will remain a Contracting Party to the AETR, and will remain under an international obligation to implement the provisions of the AETR domestically. The AETR rules are currently only given effect in domestic law because they are incorporated into EU law by Article 2(3) of the EU Drivers' Hours Regulation. On Exit Day, when the UK is no longer an EU Member State, the ECA will be repealed and the provisions of the EU Regulations, including the EU Drivers' Hours Regulation, will no longer be directly applicable in the UK. Article 2(3) of the EU Drivers' Hours Regulation currently applies the AETR to road transport operations between the EU Member States, EEA Member States and Switzerland on the one side, and other Contracting Parties to the AETR on the other. International law will provide that the AETR (in place of the EU Regulations) will apply to international road transport operations between the UK and EU Member States. Part 3 of this instrument amends the retained EU law accordingly to ensure the correct application in domestic law of the AETR. As set out above, Part 2 of this instrument ensures the full implementation and enforceability of these rules.

6.9 Another important deficiency relates to the scope of the key enforcement provisions. The provisions of the EU Drivers' Hours Regulation and EU Tachograph Regulation are currently directly applicable in all Member States, including the UK. The liability for a breach of the EU Drivers' Hours Regulation and the driving time rules in the AETR currently arises from the definition of "applicable Community rules" in section 103 of the Transport Act 1968, which means "any directly applicable EU provision for the time being in force about the driving of road vehicles and includes the [AETR], as amended, as applied by Article 2(3) of the Community Drivers' Hours Regulation". The Community Drivers' Hours Regulation is defined as "Regulation (EC) No 561/2006 of the European Parliament and of the Council as amended from time to time" which in this document is referred to as the EU Drivers' Hours Regulation. This instrument amends the relevant definitions in the Transport Act 1968 to ensure the continued enforceability of the drivers' hours rules, as set out in retained EU law, and in the AETR.

6.10 Regulation (EEC) No 3916/90 on measures to be taken in the event of a crisis in the market in the carriage of goods by road, and Regulation (EU) No 2016/68 on common procedures and specifications necessary for the interconnection of electronic registers of driver cards are revoked. These Regulations relate to arrangements for co-operation, including information exchange between Member States and the Commission and so are not appropriate to retain in the context of the UK's withdrawal from the EU. The corresponding provisions of the EEA Agreement, in Annex XIII, that refer to these Regulations are revoked.

7. Policy background

What is being done and why?

7.1 The Government is implementing existing obligations under EU and international law in the field of drivers' hours and tachographs. The aim is that the effects of EU law in this area will be unchanged. This entails correcting deficiencies which arise in the law

as a result of the UK's withdrawal from the EU, to ensure that the statute book continues to function after Exit Day.

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 and enforceable from Exit Day. This instrument does not modify the requirements for those drivers subject to the drivers' hours or tachograph rules.

7.3 Chapter 1 of Part 2 of the instrument amends Part 6 of the Transport Act 1968. This legislation sets out the offences related to the drivers' hours and tachograph rules. Amendments are made to create a fully enforceable and clear enforcement regime for the AETR rules in relation to the tachograph requirements. For example, there is a requirement for the tachograph to be installed only by approved fitters. These requirements themselves are contained in the AETR, which already applies to in-scope journeys, and therefore do not themselves require implementation. However, the offence and penalty regime for these requirements had not been fully implemented in domestic legislation, and is now being put in place to ensure that the UK has a fully effective and enforceable regime for the AETR tachograph requirements. As well as being a requirement under international obligations, this implementation is particularly important in the context of EU Exit because from Exit Day many UK international hauliers will operate under the AETR rules as opposed to the EU rules. Since the AETR tachograph requirements are aligned to the EU tachograph rules, the approach taken is to implement them in the same way as the offences and penalties already in place in connection with the EU tachograph rules. As a consequence, a driver subject to the EU rules prior to Exit Day, and subject to the AETR rules from Exit Day, will be subject to the same enforcement regime in both cases.

7.4 There are also amendments to this Part of the Transport Act 1968 to fully implement the requirements contained in the EU Tachograph Regulation to prohibit the supply of tachograph equipment without a type-approval certificate and requirements relating to testing for security vulnerabilities. These aspects of the type-approval regime had not been fully implemented, but are now being put in place to ensure that the UK has a fully effective and enforceable type-approval regime for tachograph equipment. While the amendments are designed to prevent any theoretical legal gaps in the regulatory regime, they are not in response to any known exploitation of such gaps. This is not therefore expected to lead to any change in current practice.

7.5 Chapter 2 of Part 2 of the instrument amends secondary legislation in the context of the amendments of the Transport Act 1968 to fully implement an enforcement regime for AETR tachograph requirements, as described above. The use of fixed penalty notices and financial penalty deposits is an important part of the enforcement regime for road traffic offences, including breaches of the EU Drivers' Hours and Tachographs Regulations. Fixed penalty notices are issued by the Driver and Vehicle Standards Agency or the police and allow the offender to avoid prosecution by paying a fine, reducing the burden on the courts. Financial penalty deposits enable the fine imposed by a fixed penalty notice to be taken at the time the offence is committed, enabling effective enforcement against drivers from outside the UK. Amendments to the Road Traffic Offenders Act 1988 in Chapter 1 of Part 2 and to the Road Safety (Financial Penalty Deposit) Order 2009 ensure that fixed penalty notices can be

issued, and financial penalty deposit taken, for the relevant new offences created in the Transport Act 1968. Amendments to the Fixed Penalty Order 2000 and the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009 set the monetary amounts of the fixed penalty and the financial penalty deposits for those offences. The monetary amounts correspond to the amounts for existing offences in the Transport Act 1968, so, as described above, a driver subject to the EU rules prior to Exit Day, and subject to the AETR rules from Exit Day, will be subject to the same enforcement regime in both cases.

7.6 This Chapter amends secondary legislation in the context of the amendments to the Transport Act 1968 to fully implement the type approval regime for tachographs, referred to above. Specifically, it ensures that type-approval certificates issued for products that are subsequently deemed to be in breach of the requirements, are cancelled. As is the case for the related provisions in the Transport Act, this is not expected to lead to any change in current practice.

7.7 This Chapter also inserts or corrects some missing, erroneous or outdated references to EU legislation and to the AETR in secondary legislation relating to type-approval marks, the approval of tachograph fitters, type-approval of tachograph equipment, roadworthiness testing, working time rules, tachograph card fees and exemptions from drivers' hours rules.

7.8 Chapter 1 of Part 3 amends the Transport Act 1968 to address issues arising from EU Exit. It makes amendments to relevant provisions to ensure that tachograph equipment that has been installed in accordance with the EU version of the EU Tachograph Regulation in an EU Member State continues to be permitted for use in the UK. For example, this ensures that a vehicle based in an EU Member State and operating temporarily in the UK is able to do so without being in contravention of the tachograph rules. Since the EU version of the EU Tachograph Regulation and the retained EU law version of the EU Tachograph Regulation will be substantively the same at Exit Day, this retains the status quo.

7.9 By the same logic, amendments are made to the relevant provisions to ensure that tachograph equipment in compliance with, and type approved in relation to, the relevant technical specifications made under the EU version of the EU Tachograph Regulation continue to be permitted for use in the UK. For example, a tachograph with type approval issued by an EU Member State in relation to the EU version of the technical specifications, that is imported for supply in the UK will be compliant with the rules. As above, since the EU version of the technical specifications and the retained EU law version of the technical specifications will be substantively the same at Exit Day, these provisions serve to retain the status quo. References to the EU version of the EU Tachograph Regulation, including in offences, contain any future amendments made at the EU level. This ensures that this arrangement continues to function if the EU version of the EU Tachograph Regulation is modified in the future. Relevant parties will be notified of and, where appropriate, consulted, in relation to any such changes.

7.10 This Chapter also amends the Transport Act 1968, the Road Traffic Offenders Act 1988 and the Road Traffic (Foreign Vehicles) Act 1972 to make consequential drafting changes arising from EU Exit to ensure these provisions continue to function and are as clear as possible.

7.11 Chapter 2 of Part 3 amends secondary legislation to address issues arising from EU Exit. It amends the legislation related to the type-approval of tachograph equipment in order to implement the policy described above as regards ensuring the continued ability for tachograph equipment approved by EU Member States to be used in the UK.

7.12 This Chapter also amends secondary legislation relating to the approval of tachograph fitters, type-approval of tachograph equipment, working time rules, exemptions from drivers' hours rules and fixed financial penalty provisions, to make consequential drafting changes arising from EU Exit to ensure these provisions continue to function and are as clear as possible.

7.13 Chapter 3 of Part 3 amends retained EU law to address issues arising from EU Exit. The majority of the amendments are consequential drafting changes arising from EU Exit to ensure these provisions continue to function and are as clear as possible.

7.14 In addition, this Chapter amends retained EU law to transfer a number of functions, including regulation-making powers, from the European Commission to the appropriate UK authority (the Secretary of State in Great Britain or, as the case may be, the UK and the Department for Infrastructure in Northern Ireland). Regulation-making powers are transferred to the Secretary of State in relation to authorising exemptions from the drivers' hours rules for transport operations carried out in exceptional circumstances, procedures for field tests of tachograph equipment, setting out standardised reporting forms and specifying the content of the training of control officers.

7.15 The Commission's obligation to adopt implementing acts relating to the technical specifications of tachograph equipment is transferred to the Secretary of State as a regulation-making power. The technical specifications for tachograph equipment are currently contained in annexes to the EU Tachographs Regulation. For the sake of clarity and brevity, instead of amending these lengthy annexes to make consequential drafting changes arising from EU Exit, the approach taken is to substitute for them the corresponding provisions of the AETR. These are substantively the same. However the corresponding AETR provisions, which are based on the EU versions, have already been adapted to make them suitable for a non-EU context, for example replacing the words "Member State" with "Contracting Party".

7.16 In the context of the policy described above in relation to Chapter 1 of Part 3 as regards ensuring the continued ability for tachographs that have been type-approved in EU Member States to be used in the UK, this amendment provides that regulations made under this power may give effect to this. Also to deliver this policy, amendments make a distinction between "UK type approval" and "EU type approval" of tachograph equipment. For UK type-approval, the Commission's obligation to provide manufacturers with security, functionality and interoperability certificates is transferred to the Secretary of State (or a person appointed by him).

7.17 In the context of the policy described above in relation to Chapter 1 of Part 3 as regards ensuring the continued ability for tachographs that have been fitted in EU Member States to be used in the UK, amendments are made to recognise EU approved fitters, workshops and manufacturers.

7.18 This Chapter revokes two items of retained EU law that relate to arrangements for co-operation and information exchange between Member States, and which therefore cannot function in the context of the UK's withdrawal from the EU. Although in the

absence of agreement with the EU, the UK will be unable to continue to participate directly in the information exchange regime in relation to tachograph cards (which helps to prevent duplicate applications being made in different countries by the same driver), it is expected that the UK will be able to share this information via similar arrangements that exist for non-EU Contracting Parties to the AETR.

7.19 This instrument applies to drivers' hours and tachographs relating to the carriage of goods and passengers by road, which is a transferred matter for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for EU Exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for Exit Day absent a Northern Ireland Executive. With Exit Day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is an instrument which takes forward the necessary provisions for Northern Ireland in respect of retained EU law. As set out at section 4 of this document, the necessary amendments to Northern Ireland domestic legislation will be made in a separate instrument.

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 of the EU Withdrawal Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under paragraph 21 of Schedule 7 to the EU Withdrawal Act, in conjunction with the section 8 power. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

8.2 Alongside the EU Withdrawal Act powers, the instrument is also being made under section 2(2) of the ECA to ensure that obligations under EU law (which requires Member States to implement the AETR) are fully implemented and enforceable prior to Exit Day, as set out in sections 6 and 7 of this document.

9. Consolidation

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

10. Consultation outcome

10.1 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. This includes plans for making secondary legislation to ensure that the statute book continues to function irrespective of the outcome of negotiations. There was support amongst stakeholders for ensuring that this is the case, including in

relation to the drivers' hours and tachograph rules, which are fundamental to the UK's road safety regime. This instrument ensures that from Exit Day, for a driver or operator subject to the drivers' hours and tachograph rules, the regulatory requirements will be the same as those which applied before Exit Day for those to whom the rules apply.

10.2 Stakeholder consultation was not undertaken in relation to the aspects of the instrument that implement existing EU law and the AETR. There is no viable alternative to fully implementing the UK's international obligations in this area, which are to ensure that the EU drivers' hours and tachograph rules and the AETR are fully enforceable.

10.3 The Northern Ireland Department for Infrastructure has been consulted in the preparation of the provisions that amend retained EU law and extend to Northern Ireland as set out in section 4.

11. Guidance

11.1 There are no plans to produce specific guidance on the effect of this instrument, as the drivers' hours and tachograph rules will remain substantively the same for drivers of large goods and passenger vehicles.

11.2 The Department for Transport and the Driver and Vehicle Standards Agency already produce guidance for drivers and transport operators on the drivers' hours and tachograph rules. This guidance is available on the gov.uk website at:

https://www.gov.uk/government/collections/drivers-hours-rules-and-guidance

Alternatively a printed copy can be obtained from Helen Grech at the Department for Transport, Great Minster House, 33 Horseferry Road, London, SW1P 4DR.

11.3 In due course the guidance will be updated to correct references to "EU drivers' hours rules".

12. Impact

12.1 The impact on business, charities or voluntary bodies is minimal, since there will be no substantive changes to the requirements of the drivers' hours and tachograph rules as a consequence of this instrument, which is designed to maintain the regulatory status quo in the context of EU Exit.

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 regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Jesse Norman, Minister 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 of the drivers' hours and tachograph rules, the requirements remain the same after Exit 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 Francis Jackson or Helen Grech at the Department for Transport, can be contacted with any queries regarding this instrument. Contact details are: Email: francis.jackson@dft.gov.uk or Telephone: 07827 085234; or Email: helen.grech@dft.gov.uk, or Telephone: 07717800687.

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 Jesse Norman, Minister of State, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

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	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, 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	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
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	Statement setting out: 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, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, 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.

Part 2

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

1. Appropriateness statement

1.1 The Minister of State, Jesse Norman, 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 etc.) (EU Exit) Regulations 2019 does no more than is appropriate."

1.2 This is the case because: the changes are mostly minor and technical in nature, and are necessary to ensure that existing legislation concerning drivers' hours and tachographs continues to operate effectively in light of the UK's withdrawal from the EU. While the rules under the EU Regulations are to be replaced by AETR rules for road transport operations between the UK and EU Member States, Switzerland, and (with the exception of Iceland) EEA Member States, the requirements of these rules are the same as for the EU rules and this is an appropriate use of the powers.

2. Good reasons

2.1 The Minister of State, Jesse Norman, 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."

2.2 These are set out in paragraphs 6.6-6.10 and 7.8-7.18 of this explanatory memorandum.

3. Equalities

3.1 The Minister of State, Jesse Norman, 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 ensure that existing rules concerning social conditions for drivers of goods or passenger vehicles continue to apply via domestic law on and after Exit Day."

3.2 The Minister of State, Jesse Norman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, Jesse Norman, 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 etc.) (EU Exit) Regulations 2019 extend in part to Northern Ireland, I have given equivalent due regard to the need to eliminate discrimination, harassment and victimisation in relation to Northern Ireland."

4. Explanations

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