EXPLANATORY MEMORANDUM TO

THE DRIVERS' HOURS, TACHOGRAPHS, INTERNATIONAL ROAD HAULAGE AND LICENSING OF OPERATORS (AMENDMENT) REGULATIONS 2022

No. XXXX

1. Introduction

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

2. Purpose of the instrument

2.1 The purpose of this instrument is to implement fully some of the international road transport provisions in the Trade and Cooperation Agreement between the European Union ("EU") and the United Kingdom ("UK"), entered into on 30th December 2020 ("the TCA"). This includes prospective provisions related to drivers' hours rules and tachograph equipment in goods vehicles (such as bringing into scope some light goods vehicles and the introduction of new tachograph equipment). It also applies, in accordance with the TCA, some specialised international provisions that were removed or amended when the Department was preparing for a no-deal exit from the EU. It also removes some access rights for EU operators to reflect the market access in the TCA.

3. Matters of special interest to Parliament

3.1 The Drivers' Hours, Tachographs, International Road Haulage and Licensing of Operators (Amendment) Regulations were originally laid in draft on 23 June 2022, but were withdrawn on 29 June 2022, before consideration by the Scrutiny Committees. This instrument is being re-laid in draft. Regulation 3, which includes the retrofitting of the smart 2 tachograph to older vehicles, now reflects fully the policy intent that retrofitting will be only applicable to vehicles being used in the territory of the EU and not to those operating domestically or internationally outside of the EU. This reflects the UK/EU Trade and Co-operation Agreement (Article 3 of section 2, Part C of Annex 31).

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales and Scotland and Northern Ireland, except for regulation 5 which extends to England and Wales and Scotland.

4.2 The territorial application of the provisions in this instrument is the same as the territorial extent of those provisions.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State at the Department for Transport, Baroness Vere of Norbiton, has made the following statement regarding Human Rights:

"In my view, the provisions of the Drivers' Hours, Tachographs, International Road Haulage and Licensing of Operators (Amendment) Regulations 2022 are compatible with the European Convention on Human Rights."

6. Legislative Context

6.1 This instrument will be made using powers in section 31 of the European Union (Future Relationship) Act 2020 ("EU(FR)A") and the procedures set out in paragraph 7 of Schedule 5 to that Act. It will be considered under the draft affirmative procedure. This instrument will make amendments to EU Regulations retained as UK law by section 3 of the European Union (Withdrawal) Act 2018, as amended, ("EU(W)A"), to implement the commitments in the TCA in the area of drivers' hours, tachographs, and international haulage access to the UK.

6.2 This instrument (except regulation 5) extends to Northern Ireland (where road transport responsibilities are devolved) in respect of retained EU law, in agreement (which has been given) with the Northern Ireland Department for Infrastructure. It enables relevant provisions of the TCA to be implemented properly in respect of international road transport, further to the UK Government's responsibility to implement the TCA.

7. Policy background

What is being done and why?

7.1 This instrument will amend domestic legislation to implement fully some of the international road transport provisions in the TCA, mainly around drivers' hours and tachograph rules, but also in the area of international haulage access to the UK.

7.2 Although the general implementation power in section 29 of the EU(FR)A states that "Existing domestic law has effect on and after the relevant day with such modifications as are required for the purposes of implementing in that law the Trade and Cooperation Agreement…", the changes being proposed under section 31 will provide legal clarity and aid enforcement.

Explanations

What did any law do before the changes to be made by this instrument?

Drivers' hours and tachograph rules

7.3 Retained Regulation (EC) 561/2006 covers drivers' hours rules and specifies the maximum driving times and minimum break and rest periods, for drivers of most large vehicles (i.e. goods vehicles weighing over 3.5 tonnes and passenger vehicles with 10 or more seats) who are engaged in the carriage of goods or passengers by road.

7.4 Retained Regulation (EU) 165/2014 specifies the rules relating to the construction, installation, use, testing and control of tachographs used in road transport. Tachographs are devices used to record a drivers' compliance with the EU drivers' hours rules and to therefore enable the effective enforcement of the rules.

7.5 The drivers' hours and tachograph rules are in place to protect road safety by limiting the time drivers spend at the wheel; helping reduce fatigue-related accidents. They are also in place to ensure fair competition in the industry and to improve the working conditions of drivers. Both EU Regulations were saved as retained EU law by the EU(W)A.

7.6 These retained EU Regulations were first amended by statutory instrument 2019/453 to remedy deficiencies arising from the withdrawal of the UK from the EU, as well as

removing any references, commitments, or derogations related specifically to international transport. This reflected what would have been the position in the absence of the TCA, including that international transport between the UK and the EU would be governed by the European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport ("the AETR"), which is a United Nations Economic Committee for Europe treaty that sets out drivers' hours and tachograph rules for journeys between the parties to the agreement. The AETR parties include the UK, all of the EU Member States, most of the countries in the rest of geographical Europe and some areas beyond it. The AETR rules for drivers' hours are similar to those of Regulation (EC) 561/2006, but lack some features specific to Regulation (EC) 561/2006. The AETR also differs from Regulation (EU) 165/2014 in respect of which tachographs are fitted to some vehicles.

7.7 Statutory instrument 2020/1658 was made under the EU(FR)A, immediately after the coming into force of the EU(FR)A, to ensure the enforcement of the drivers' hours and tachograph rules for journeys between the UK and the EU was subject to the retained EU Regulations and not the AETR. In addition, statutory instrument 2021/135 made technical amendments further to changes made across the EU to the retained EU Regulations during 2020, in order to ensure the Regulations were technically operative. Despite coming into force after the conclusion of the TCA it does not reflect the commitments in the TCA, with regard to international transport between the UK and the EU. This statutory instrument amends the retained EU Regulations further under the EU(FR)A to ensure they are fully consistent with the TCA, including to reflect the commitments to significant future changes made in the TCA.

International haulage access to the UK

7.8 Regulation (EC) 1072/2009 contains requirements for the use of goods vehicles travelling to the EU and permits the use of goods vehicles registered in the EU on UK roads. It sets out rules on cabotage movements. Cabotage is the transport of goods between two places (i.e. loading and unloading of goods) within a single country by a haulier registered in another country. This Regulation was also retained by the EU(W)A.

7.9 The Goods Vehicles (Licensing of Operators) (Temporary Use in Great Britain) Regulations 1996 facilitate combined transport operations between the UK and the EU. Combined transport is a form of intermodal transport where goods are transported in the same loading unit or vehicle using two or more modes of transport (such as rail or water transport).

Why is it being changed?

Drivers' hours and tachograph rules

7.10 This instrument will provide for the aspects of the retained EU Drivers' Hours and Tachograph Regulations specific to international transport that were removed or amended when the Department was preparing for a no-deal exit from the EU and also commitments made in the TCA; such as bringing some smaller vehicles over 2.5 tonnes into the scope of the drivers' hours and tachograph rules in July 2026.

7.11 In particular, this instrument provides for the future introduction and spread of a new generation of tachograph equipment and the use of tachographs in some light goods vehicles used on international transport journeys. Tachographs are essential

equipment recording compliance or otherwise with drivers' hours and other working time rules.

7.12 The equipment types are periodically updated across Europe to enable them to be more secure against fraud and effective. The TCA aligns the implementation dates of changes in the UK with EU implementation dates related to second generation smart tachographs, which will gradually supersede older generations (analogue tachographs, digital tachographs and first generation smart tachographs). The extra capabilities of the second generation smart tachograph include the automatic recording of a vehicle's position, including when it crosses borders and where it is loading or unloading (for example, to help check if a vehicle is being used legally because access rights can depend on whether loads are transported across borders or not), using a global navigation satellite system. The second generation tachographs are also designed to prevent manipulation and improve enforcement, in ways additional to the first generation smart tachograph.

7.13 This includes for newly registered vehicles and also some retrofit deadlines for older vehicles. The alignment of dates between the UK and EU aids efficient manufacturing and helps enforcement authorities. For most European countries outside the EU, the implementation dates for tachographs relate to the wider AETR agreement (see paragraph 7.6 for details); which currently requires the fitment and use of analogue and digital tachographs but not smart tachographs.

7.14 Some light goods vehicles are being brought into the scope of drivers' hours and tachograph rules from 1st July 2026. These are vehicles with a maximum weight of 2.5 to 3.5 tonnes, used for hire or reward internationally. This group of vehicles is also included from 2022 in operator licensing in both the UK and EU.

7.15 The instrument also confirms that some provisions already made by the UK via international agreements related to international road transport (for both drivers' hours and EU operator access to the UK) are applied in domestic UK legislation. For example, it includes two derogations from the weekly rest requirements in the retained EU drivers' hours regulation, one which allows drivers on international goods journeys, outside their home country, to take two consecutive reduced weekly rest periods[1] in some circumstances and one which allows drivers of passenger vehicles on one-off international journeys to take a weekly rest after 12 days rather than 6 days, with a number of conditions. The ability for operators to use these two derogations applies now in the UK via the commitment to the TCA and the UK's accession of the UK to the Interbus Agreement[2]. The instrument amends the relevant legislation to make it consistent with these commitments.

7.16 The Roads Chapter of the TCA specified that the drivers' hours and tachograph rules which would be applicable for transport journeys between the UK and the EU, from 1st January 2021, would be consistent with Regulation (EC) 561/2006 and Regulation

[1] A "reduced weekly rest period" is a rest period of at least 24 but less than 45 continuous hours (which is a regular weekly rest). It must be compensated for by an equivalent period of rest taken in one block before the end of the third week following the week in question. The compensating rest must be attached to a period of rest of at least 9 hours – in effect either a weekly or a daily rest period. There are further specific provisions connected with compensatory rest applicable to the two derogations.

[2] The "Interbus Agreement" means the Agreement on the international occasional carriage of passengers by coach and bus, as subsequently amended, which entered into force on 1 January 2003. Article 8 of the Agreement allows Parties to use either Regulation (EC) 561/2006 or AETR.

(EU) 165/2014, as opposed to AETR (which would have applied to these journeys in the absence of the TCA).

7.17 To enable enforcement of the rules under the TCA for international journeys, the Drivers' Hours and Tachographs (Amendment) Regulations 2020 (SI 2020/1658), were made under the urgent powers in the EU(FR)A, to enable the enforcement of the TCA rules via the retained EU Drivers' Hours and Tachographs Regulations.

International haulage access to the UK

7.18 Retained Regulation (EC) 1072/2009 currently allows EU hauliers to undertake one cabotage journey within three days of an unladen (not carrying a load) international journey into the UK. The TCA provides for cabotage movements only when they follow laden journeys. Therefore, UK domestic legislation is amended to reflect the TCA arrangements, which do not provide for the right of one cabotage journey within 3 days of arrival on an unladen international journey.

7.19 In addition, EU hauliers with a Community Licence have been permitted to go to the UK to pick up goods, and then go to a non-EU country (e.g. Turkey) to drop off those goods. This is known as "triangular traffic". Since these types of journeys are not included in the TCA, the retained Regulation (EC) 1072/2009 is amended to reflect that these journeys cannot be conducted by an operator who only holds a Community Licence. EU operators can still carry out these journeys without these rights, but they will need to hold a permit issued by the European Conference of Ministers of Transport ("ECMT"). The ECMT access system is based on a quota and includes 43 European States. ECMT permits support UK operators moving similar triangular traffic between EU States and other countries.

7.20 The UK is removing the triangular rights of EU hauliers and the cabotage rights following unladen entry, because the equivalents are not being provided for UK hauliers as a consequence of the TCA. Domestic legislation currently reflects the market access arrangements when the UK was an EU Member State and will be amended to reflect the access rights in the TCA

7.21 While the UK was an EU Member State, market access rules between the UK and the rest of the EU were more comprehensive than those provided by use of an ECMT permit, and therefore ECMT permits were not generally used in the UK by EU operators. However, the TCA does not replicate all EU market access rules and so ECMT permits are now liable to be used in the UK by some EU operators. This instrument therefore refines the scope of the operator licence exemption in the Goods Vehicles (Licencing of Operators) (Temporary Use in Great Britain) Regulations 1996, which applies to non-UK vehicles accessing Great Britain on the basis of an ECMT permit, to ensure EU operators are not excluded as a result of the definition of "foreign goods vehicles" in those Regulations.

7.22 Combined transport access rights applicable within the EU were not included in the TCA. They have been extinguished for UK road transport operators in the EU. Therefore, since the TCA does not allow EU hauliers to conduct combined transport operations in the UK, this instrument amends the Goods Vehicles (Licensing of Operators) (Temporary Use in Great Britain) Regulation 1996 to remove combined transport rights. An ancillary access right for EU hauliers to load and unload goods as part of combined transport operations within 25km from the coast of Great Britain (or an EU Member State) is also being removed.

What will it now do?

7.23 Domestic legislation is amended as follows.

Retained Regulation (EC) 561/2006

a) In Article 2 (Scope) goods vehicles between 2.5 and 3.5 tonnes on international journeys are added to the scope of the Regulation from 1st July 2026.

b) In Article 3 (Exemptions) an exemption is added, from 1st July 2026, for vehicles between 2.5 and 3.5 tonnes used for own account international journeys and not for hire or reward.

c) In Article 4 definitions of "occasional passenger services" and "special regular passenger services" are inserted.

d) In Article 8 (Daily and weekly rest periods) a derogation is added for vehicles used for occasional international passenger journeys to allow drivers of these vehicles to postpone the weekly rest period for up to 12 consecutive 24-hour periods.

e) In Article 8 (Daily and weekly rest periods) a derogation is added allowing drivers on certain patterns of international goods transport to take two consecutive reduced weekly rest periods.

f) In Article 10 (Liability on Transport Operators) an amendment is made so that operators are liable for infringements committed under the drivers' hours rules by their drivers in the EU and other countries or territories as well as in the UK.

Retained Regulation (EU) 165/2014

g) In Article 2 (Definitions) definitions of 'smart tachograph 1' and 'smart tachograph 2' are added.

h) In Article 3 (Scope) the implementation dates for the smart tachograph 2 are added.

i) In Article 8 (smart tachograph - recording of the position of the vehicle at certain points during the daily working period) and Article 34 (Use of driver cards and record sheets) requirements for drivers to record border crossings are added.

j) Article 11 (Detailed provisions for smart tachographs) is amended to remove reference to EU implementing acts.

Retained Regulation (EC) 1072/2009

k) In Article 2 (Definitions) the definition of "international carriage" is amended;

l) In Article 8 (Cabotage) rights of EU hauliers to undertake Cabotage following an unladen journey into the UK are removed.

The Goods Vehicles (Licensing of Operators) (Temporary Use in Great Britain) Regulations 1996 (S.I. 1996/2186)

m) In regulation 5, the right of combined transport for EU operators is removed.

n) In regulation 6, amendments are made to ensure EU operators' vehicles are not excluded from operator licensing when using ECMT permits.

8. European Union Withdrawal and Future Relationship

8.1 Although this instrument relates to withdrawal from the EU, it is not made using powers under the EU(W)A, so does not trigger the statement requirements under the EU(W)A.

8.2 This instrument does however relate to the implementation of the TCA and is using the powers in section 31 of the EU(FR)A, under the affirmative procedure.

9. Consolidation

9.1 Not appropriate.

10. Consultation outcome

10.1 There was no formal public consultation, as the statutory instrument would be implementing the commitments in the TCA, would therefore maintain the status quo and would not have an impact on the general public.

10.2 The Department conducted a targeted consultation with the main industry representative organisations (i.e. 9 organisations comprising the main trade associations representing transport operators and vehicle manufacturers; the main trade unions representing drivers; the devolved administrations and a key road safety organisation). This was via a letter asking for their views on the proposals to amend domestic legislation to fully implement some of the international road transport provisions in the TCA, mainly around drivers' hours and tachograph rules, but also in the area of international haulage access to the UK.

10.3 All 8 organisations that responded (1 did not) to the consultation were broadly supportive of the Department's plans and did not raise any issues around the proposed legislative changes. However, there were some concerns raised around the implementation of the smart tachograph 2 in the UK, around timings; availability; and technical challenges of fitment into light goods vehicles over 2.5 tonnes. The main concerns related to the potential availability of the smart tachograph 2, in the context of compliance with the implementation date for newly registered vehicles.

10.4 There were availability and timing issues with the implementation of the smart tachograph 1 in June 2019. The implementation date for the fitment of smart tachograph 1 in newly registered vehicles remained in place for the deadline of 15 June 2019, but manufacturers and operators were allowed to fit digital tachographs into newly registered vehicles provided that these were retrofitted with a smart tachograph 1 once the supply shortage was resolved. This approach meant vehicles could still be delivered to industry and trade was not disrupted. If there are difficulties on this occasion, the Department would again work with the Driver and Vehicle Standards Agency and industry to come up with similar pragmatic solutions. If there is a supply issue it would be apparent at European level not just in the UK and action at the EU level might be taken.

10.5 In addition, industry sources have raised concerns about the cost of installing a tachograph for the first time into smaller vehicles by 2026 and the lack of knowledge by some smaller operators of this new requirement. The Department will work with industry to raise awareness of the new requirement. The cost of installation is not subject to an impact assessment, because the new requirement was implemented as part of the EU Mobility Package changes in August 2020 via a regulation directly applicable to the UK at that time.

10.6 None of the above concerns would affect the content of this statutory instrument and will be addressed with industry. The Government is committed to implementing the smart tachograph 2 in accordance with the TCA requirements. This includes the deadline dates and scope of the use of smart tachograph 2s.

11. Guidance

11.1 There is no need to update guidance as a consequence of this instrument as the proposed changes will clarify the applicable rules for international road transport between the EU and UK and will not require drivers or transport operators to make any real changes to the way they operate now (maintaining the status quo).

11.2 Detailed guidance on the drivers' hours and tachograph rules applicable to drivers of goods vehicles and passenger vehicles is published on the gov.uk website at:

https://www.gov.uk/guidance/drivers-hours-goods-vehicles

https://www.gov.uk/guidance/drivers-hours-passenger-vehicles

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because there will be no substantive changes to the requirements of the drivers' hours and tachograph rules, or changes affecting UK drivers and transport operators, as a consequence of this instrument. This instrument also provides for prospective changes to the rules, which are part of the TCA and are needed for UK transport operators to work in the EU.

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 UK drivers and operators.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that it will be monitored alongside the EU(FR)A.

14.2 As this instrument is made under the EU(FR)A, no review clause is required.

15. Contact

15.1 Helen Grech at the Department for Transport Telephone: 07717 800687 or email: helen.grech@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Duncan Price, Deputy Director for Road Freight Regulation at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Baroness Vere of Norbiton, Parliamentary Under Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.