EXPLANATORY MEMORANDUM TO

THE PASSENGER AND GOODS VEHICLES (TACHOGRAPHS) (AMENDMENT ETC.) 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 Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to amend the Transport Act 1968 to enable enforcement provisions to apply to new types of tachographs as required under EU law. This instrument also amends EU Exit legislation that has already been made to ensure that the amendments being made by this instrument will operate consistently in the event the UK exits the EU without a negotiated agreement.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 includes Scotland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England, Wales and Scotland.

4.2 The territorial application of this instrument is England, Wales and Scotland.

5. European Convention on Human Rights

5.1 Michael Ellis has made the following statement regarding Human Rights:

"In my view the provisions of The Passenger and Goods Vehicles (Tachographs) (Amendment etc.) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The obligations and requirements in relation to the construction, installation, use, testing and control of tachographs are set out in Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport ("EU Regulation 165/2014"). The enforcement provisions for these obligations and requirements are in Part VI of the Transport Act 1968 and the relevant regulations made under those provisions.

6.2 New obligations and requirements in relation to a more advanced type of tachograph, referred to as a 'smart tachograph', were introduced by Commission Implementing Regulation (EU) 2016/799 that was made under Article 11 of EU Regulation

165/2014. These new provisions came into force on 15th June 2019 and it is necessary to amend the relevant parts of the Transport Act 1968 so that enforcement provisions can apply to smart tachographs and to ensure that they will remain consistent with provisions already made by the Drivers' Hours and Tachographs (Amendment etc.) (EU Exit) Regulations 2019 in connection with the UK's exit from the EU.

7. Policy background

What is being done and why?

7.1 EU drivers' hours and tachograph rules are in place to protect road safety by limiting the time drivers spend at the wheel and thus help reduce fatigue-related accidents. They also ensure fair competition in the industry and improve the working conditions of drivers.

7.2 Tachographs are required by EU law to be fitted to most large vehicles (i.e. goods vehicles weighing over 3.5 tonnes and passenger vehicles with 10 or more seats) that are engaged in the carriage of goods and passengers by road. These are used to record driver compliance with the EU drivers' hours rules and to therefore enable the effective enforcement of the rules.

7.3 EU Regulation 165/2014 introduced a new generation of digital tachograph that was aimed at reducing fraud, allowing easier enforcement and reducing administrative burdens on drivers through increased automation. The Department for Transport consulted on this EU Regulation in 2015 and implemented most of the requirements in 2016.

7.4 EU Regulation 165/2014 provided for detailed provisions relating to new 'smart' tachographs to be set out in further implementing acts. Those implementing acts were adopted via Commission Implementing Regulation 2016/799 which came into force on 2 March 2016 and provided for the new smart tachograph requirements to apply in respect of relevant vehicles first registered in Member States from 15 June 2019.

7.5 In domestic law, where a vehicle is required to be fitted with a tachograph that tachograph must have been installed, comply with, or be used in accordance with the EU Regulation 165/2014. A person who uses a vehicle in breach of any one of those requirements may commit an offence. These provisions need to be updated so that they may also apply to breaches of the new smart tachograph requirements that are applicable on 15 June 2019. This will not result in any change to the existing criminal sanctions for breach of the regulatory requirements. DVSA and the police will be able to take enforcement action for breaches of the new tachograph requirements set out in Commission Implementing Regulation 2016/799 once this instrument is brought into force.

7.6 The amendments we are making will have a consequential effect on prospective amendments being made to the Transport Act 1968 on EU Exit day by the Drivers' Hours and Tachographs (Amendment etc.) (EU Exit) Regulations 2019. This instrument therefore also includes some consequential amendments to those EU Exit regulations to ensure that they operate consistently when brought into force.

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

8.1 This instrument is not being made under the European Union (Withdrawal) Act because it only affects domestic legislation that needs to be amended to reflect changes in EU law before the UK exits from the EU.

8.2 Deficiencies in EU law relating to tachographs and drivers' hours were corrected by the Drivers' Hours and Tachographs (Amendment etc.) (EU Exit) Regulations 2019 ("SI 2019/453). This instrument amends SI 2019/453 to ensure that provisions in domestic legislation will apply effectively from EU Exit day.

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 officials engaged with the Road Transport industry during the negotiation of EU Regulation 165/2014. A formal consultation was undertaken by the Department for Transport to inform the implementation of Regulation 165/2014 in 2015. Officials also engaged with industry in advance of Commission Implementing Regulation (EU) 2016/799 coming into force on 15th June 2019. Consequently no specific consultations were considered necessary for this statutory instrument.

10.2 The Explanatory Memorandum to the Drivers' Hours and Tachographs (Amendment etc.) (EU Exit) Regulations 2019 sets out details of consultations undertaken with regards to that SI. As the policy approach of that SI is being maintained in this instrument no additional consultations have been undertaken.

11. Guidance

11.1 There are no plans to produce specific guidance on the effect of this instrument. Guidance relating to the enforcement approach taken by the Driver and Vehicle Standards Agency with regards to the new requirements has been published, and will be updated as necessary. This can be accessed at: https://www.gov.uk/government/collections/approved-tachograph-centre-forms-and-guidance

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 An Impact Assessment has not been prepared for this instrument. Drivers and operators of heavy goods and passenger vehicles are already obliged to comply with the existing EU Tachograph Requirements, they will not have to change their behaviour as a result of this SI, so there are no impacts on business

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

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 Michael Ellis, 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."

15. Contact

15.1 James O'Connor at the Department for Transport Telephone: 07977 424380 or email: james.oconnor@dft.gov.uk can be contacted with any queries regarding the instrument.

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 Michael Ellis at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.