EXPLANATORY MEMORANDUM TO

THE DRIVERS' HOURS AND TACHOGRAPHS (AMENDMENT) REGULATIONS 2023

2023 No. 739

1. Introduction

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

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

2. Purpose of the instrument

2.1 This instrument makes provision to permit a 'transitional' smart tachograph 2 to be installed into in-scope vehicles instead of the 'full' smart tachograph 2 (which will not be available – see paragraphs 7.8 and 7.9 for details) from the implementation date of 21 August 2023. This instrument will also introduce a six-month delay to the implementation date to fit a smart tachograph 2 (including transitional units), to 21 February 2024, for newly registered vehicles used exclusively in the United Kingdom ("UK"). This is to alleviate some of the pressure on UK vehicle manufacturers who are concerned about the supply of the 'transitional' smart tachograph 2 in time to meet the 21 August 2023 implementation date.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The powers being used to make this instrument, under Article 11 and Article 41A(1) of Regulation (EU) 165/2014, as it has effect in the UK ("EUR 2014/165")[1] were introduced by the Drivers' Hours and Tachographs (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/453)[2] to empower the Secretary of State to make provisions for smart tachographs. This instrument will be the first time these powers have been used.

3.2 This instrument includes a provision correcting defects in the Drivers' Hours, Tachographs, International Road Haulage and Licensing of Operators (Amendment) Regulations 2022 (S.I. 2022/1260)[3]. Accordingly, this instrument is being issued free of charge to all known recipients of that instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

[1] https://www.legislation.gov.uk/eur/2014/165/contents
[2] https://www.legislation.gov.uk/uksi/2019/453/contents
[3] https://www.legislation.gov.uk/uksi/2022/1260/contents/made

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This instrument will be the first to make use of the powers in Article 11 and Article 41A(1) of EUR 2014/165, which allows detailed provision to be made by regulations for smart tachographs. This instrument will make amendments to EUR 2014/165 to introduce the standards for a 'transitional' smart tachograph 2 to be installed instead of a 'full' smart tachograph 2 into in-scope vehicles from 21 August 2023. Without this amendment there would be a legal obligation to install a 'full' smart tachograph 2 from 21 August 2023, but as the 'full' smart tachograph 2 will not be available from that date, it would be impossible to comply with the obligation.

6.2 In addition, this instrument will amend EUR 2014/165 to introduce a six-month delay to the introduction of a smart tachograph 2 (including transitional units) for vehicles used exclusively for journeys within the UK only (see paragraphs 7.11 and 7.12 for an explanation of this). This will mean that from 21 August 2023 all newly registered vehicles that will be used for international journeys between the UK and the European Union ("EU") will need to install a 'transitional' smart tachograph 2. Newly registered vehicles that will be used exclusively for domestic journeys within the UK will still be allowed to install a smart tachograph 1 from 21 August 2023 to 20 February 2024. From 21 February 2024 all newly registered vehicles, regardless of their journey type, will be required to install a 'transitional' smart tachograph 2 or a 'full' smart tachograph 2 when it is available.

6.3 This instrument is compliant with the commitment in Article 2 of the Northern Ireland Protocol[4] that requires there is no diminution of rights, safeguards and equality of opportunity.

7. Policy background

What is being done and why?

7.1 The amendments being made will permit a 'transitional' smart tachograph 2 to be installed into in-scope newly registered vehicles from 21 August 2023 for vehicles that will be used for international journeys between the UK and EU. This is to comply with anticipated obligations under the Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the European Union and the European Atomic Energy Community, of the other part entered into on 30 December 2020 ("TCA")[5]. The amendments will also introduce a six-month delay to the introduction of the requirement to fit a smart tachograph 2 (including transitional units) for vehicles used exclusively for journeys within the UK only, which are outside the scope of the TCA. This will help alleviate UK industry concerns around supply issues. These vehicles will be allowed to continue to install a smart tachograph 1 into in-scope vehicles until 20 February 2024.

[4] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840230/Revised_Protocol_to_the_Withdrawal_Agreement.pdf

[5] CP 426: https://www.gov.uk/government/publications/ukeu-and-eaec-trade-and-cooperation-agreement-ts-no82021 A copy of this document can be inspected (on reasonable notice) free of charge by contacting the Treaty Enquiries Service: +44 (0)20 7008 1109.

Explanations

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

7.2 EUR 2014/165 (the "tachograph rules"), specifies the rules relating to the construction, installation, use, and testing and control of tachographs used in road transport. Tachographs are devices used to record a drivers' compliance with Regulation (EC) 561/2006[6] (the "drivers' hours rules") and to therefore enable the effective enforcement of the rules.

7.3 The drivers' hours rules specify 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 The drivers' hours rules and tachograph rules form part of domestic law by virtue of the European Union (Withdrawal) Act 2018 ("EU(W)A")[7]. The drivers' hours rules and tachograph rules protect road safety by limiting the time drivers spend at the wheel and thus help reduce fatigue-related accidents, ensure fair competition in the industry, and improve the working conditions of drivers.

7.5 Tachograph equipment is periodically updated across Europe to enable it to be more effective and secure against fraud. Regulation (EU) 165/2014[8] (now part of domestic law, as EUR 2014/165) introduced the second-generation digital tachograph, called a smart tachograph, which includes a connection to the global navigation satellite system ("GNSS") facility.

7.6 Annex IC of Commission Implementing Regulation (EU) 2016/799[9] introduced the standards for the smart tachograph 1 (adopted in June 2019 across the EU).

7.7 Commission Implementing Regulation (EU) 2021/1228[10] amended Annex IC of Commission Implementing Regulation (EU) 2016/799 further to introduce the standard for the smart tachograph 2. Although the UK had left the EU when this was made, under the terms of the TCA the UK committed to the same rollout timing of the smart tachograph 2 as the EU, which is on or after 21 August 2023 for newly registered vehicles. This was implemented in UK legislation by S.I. 2022/1260, which amended EUR 2014/165 to add a definition of smart tachograph 2 by reference to the standard for the smart tachograph 2 in Commission Implementing Regulation (EU) 2021/1228.

Why is it being changed?

7.8 One function of the smart tachograph 2 is the use of the Galileo Open Service for Navigation Message Authentication ("OSNMA"), to verify the authenticity of GNSS information and to make sure the data has not been modified in any way. However, the OSNMA will not be operational before the smart tachograph 2 is due to be implemented on 21 August 2023. This means it will not be possible to rollout a fully compliant smart tachograph 2 from that date. OSNMA is the satellite system used to verify the location of the vehicle, which is in turn used to automatically record border

[6] https://www.legislation.gov.uk/eur/2006/561/contents
[7] https://www.legislation.gov.uk/ukpga/2018/16/contents/enacted
[8] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0165-20200820
[9] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0799&qid=1685636908492
[10] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R1228&qid=1685637071312

crossings. The digital map inbuilt into the smart tachograph 2 means it will still operate without the OSNMA, as it will allow the smart tachograph 2 to record border crossings, but it will be less accurate and more susceptible to fraud.

7.9 As an interim measure, the European Commission has introduced Commission Implementing Regulation (EU) 2023/980[11] (approved on 16 May 2023 and applicable from 21 August 2023) to allow a 'transitional' smart tachograph 2 to be used instead from 21 August 2023, until the OSNMA is operational and the smart tachograph 2 can be updated to the original specification. For this new 'transitional' smart tachograph 2 to be legal in the UK, the standard needs to be adopted into domestic legislation (i.e. by amending EUR 2014/165 accordingly). Without this there will be a legal obligation for newly registered vehicles to have a 'full' smart tachograph 2 installed, with which it would not be possible to comply.

7.10 As required by the TCA, the standard for the smart tachograph 2, including the 'transitional' smart tachograph 2, is to be adapted by an adaptation decision of the Specialised Committee on Road Transport (set up under the TCA to deal with specialised and technical changes that would not be appropriate to be dealt with via a formal renegotiation of the TCA) to be appropriate for application under UK law. Although a draft of the Specialised Committee on Road Transport's adaptation decision for Commission Implementing Regulation (EU) 2016/799 has been informally agreed with the European Commission, the EU has confirmed it will not be able to formally adopt and bring it into force before the implementation date of 21 August 2023. Therefore, a schedule to this instrument replicates the effect of the draft adaptation decision by way of equivalent modifications.

7.11 Parts of UK industry have raised concerns about the supply of the 'transitional' smart tachograph 2 to UK vehicle manufacturers, given that the standard has only recently been approved and the implementation date is imminent. In addition, industry sources consider the late supply will mean that many part-built vehicles (which have not yet been bought and therefore registered) with a smart tachograph 1 installed would need to be retrofitted with a 'transitional' smart tachograph 2 just because they have not been registered before 21 August 2023. This is an inefficient use of manufacturer resources, particularly as the smart tachograph 1 still enables full enforcement of the drivers' hours rules for domestic journeys within the UK.

7.12 To address UK industry concerns, this instrument will delay the implementation date for the smart tachograph 2 (including transitional units) for six months from 21 August 2023 to 21 February 2024 for vehicles that will just be used for transporting goods and passengers exclusively in the UK.

7.13 This instrument also introduces amendments to Articles 8, 9 and 10 of EUR 2014/165 to correct the date from which a tachograph in a newly registered vehicle must have certain capabilities and may have certain optional additions.

What will it now do?

7.14 This instrument will amend EUR 2014/165 to permit the installation and use of the 'transitional' smart tachograph 2 in newly registered vehicles that will be used for international journeys between the UK and EU from 21 August 2023. The instrument will also introduce a six-month delay for the requirement to install a smart tachograph 2 (including transitional units) in newly registered vehicles used for domestic journeys

[11] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023R0980&qid=1685637142755

within the UK only. For a new vehicle first registered from 21 August 2023 to 20 February 2024 and used exclusively in the UK, a smart tachograph 1 or a smart tachograph 2 (including a transitional unit) can be installed and used.

7.15 Also, the corrections to Articles 8, 9 and 10 of EUR 2014/165 provide that, from 21 August 2023, tachographs in newly registered vehicles must have certain capabilities and may optionally include a standard interface.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under powers from EU(W)A or the European Union (Future Relationship) Act 2020[12]. However, it relates to the future relationship of the UK with the EU because it addresses the commitment in the TCA to implement the smart tachograph 2 into newly registered in-scope vehicles that will be used for journeys between the UK and EU.

9. Consolidation

9.1 There are no current plans to consolidate EUR 2014/165.

10. Consultation outcome

10.1 There has been no formal public consultation. However, the Department remains in close liaison with the trade associations, particularly the Society of Motor Manufacturers and Traders, about the current concerns and issues facing UK vehicle manufacturers because of the delay in the publication of the 'transitional' smart tachograph 2 standards by the European Commission.

10.2 The Department engaged directly with Northern Ireland, where tachograph regulations are a devolved matter. As there was no Northern Ireland Assembly or Ministers in place at the time, approval was sought from the Permanent Secretary at the Department for Infrastructure for Westminster to legislate on their behalf to ensure Northern Ireland legislation is amended in line with Great Britain's legislation. Approval was confirmed on 12 June 2023.

11. Guidance

Detailed guidance on the drivers' hours rules and tachograph rules applicable to drivers of goods vehicles and passenger vehicles is published on the gov.uk website (links below).

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 The Department has not published an impact assessment for this measure as the direct impacts on business have been assessed at under £5m per year. Instead, an internal De Minimis Assessment has been conducted, the findings of which are summarised below.

[12] https://www.legislation.gov.uk/ukpga/2020/29/contents

12.4 In the transition year, the instrument will present familiarisation costs to vehicle manufacturers (£0.6m) and vehicle operators (£5.7m) as well as some retrofitting costs to vehicle dealers (£2.7m). There are no annual costs resulting from this change.

12.5 There are a range of benefits, such as ensuring continuity of business operations to move goods and people, both domestically and internationally, and increased certainty to vehicle manufacturers. The decision has been made that it is not proportionate to monetise these effects due to the lack of evidence and methodologies to do so.

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 in relation to drivers and operators.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to conduct an initial review after three years followed by a further review every five years to ensure continued suitability.

14.2 A statutory review clause is included in the instrument.

14.3 The Department intends to conduct a review of this policy, examining its reach and perceptions of its impact amongst stakeholders. The level of evidence and resourcing for the Post Implementation Review ("PIR") has been assessed to be low. By the time the PIR is conducted, the effect of the amendments made by this instrument will have been superseded by other requirements.

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 Richard Holden MP, Parliamentary Under Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.