EXPLANATORY MEMORANDUM TO

THE DRIVERS' HOURS AND TACHOGRAPHS (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2019

2019 No. 12

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Infrastructure to accompany the Statutory Rule (detailed above) which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 and is subject to the negative resolution procedure.

2. Purpose

2.1 The purpose of the Statutory Rule is to fully implement 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"). This must be addressed before the point at which the UK leaves the European Union (EU) ("Exit Day").

3. Background

3.1 Regulation (EC) No. 561/2006 ("the EU Drivers' Hours Regulation") specifies EU-wide drivers' hours rules. 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".

3.2 Regulation (EU) No. 165/2014 ("the EU Tachograph Regulation") specifies the requirements relating to the construction, installation, use, testing and control of tachographs used in road transport in the EU. A tachograph is a recording device installed on board a vehicle that drivers must use to record their driving, break and rest times and is used to monitor and enforce compliance with the EU drivers' hours rules. These requirements are commonly referred to as "the EU tachograph rules".

3.3 For operations starting, ending or passing through a country outside the EU, EEA or Switzerland, 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. The AETR rules cover goods vehicles - including vehicle and trailer combinations - with a maximum weight over 3.5 tonnes. Passenger carrying vehicles with more than eight passenger seats are also included in the AETR rules.

3.4 In both EU Regulations it was left to Member States to adopt measures to enforce the drivers' hours and tachograph rules. Various pieces of Northern Ireland legislation were amended to provide for criminal sanctions for breaches of the EU drivers' hours rules and EU tachograph rules. The Passenger and Goods Vehicles (Recording Equipment) Regulations (Northern Ireland) 1996 comprise the main piece of domestic legislation in this area.

3.5 The drivers' hours rules are enforced through the inspection of tachographs by the Driver and Vehicle Agency and the police. 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 and are intended to help protect road safety and driver welfare.

3.6 On consideration of Northern Ireland legislation in the field of drivers' hours and tachographs 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. The amendments in this Statutory Rule provide for the enforceability of tachograph rules for AETR journeys.

3.7 Amendments are being made to domestic implementing provisions for the EU Regulations and the AETR (which are currently given effect in domestic law because they are incorporated into EU law by Article 2(3) of the EU Drivers' Hours Regulation) to ensure that these regulatory regimes have been fully implemented in the UK. In particular, this includes amendments to criminal offences in relation to the use of tachographs under the AETR. This Statutory Rule ensures a fully enforceable and clear enforcement regime for the AETR rules in relation to the tachograph requirements.

3.8 Part 2 of the Statutory Rule amends the Road Traffic (Northern Ireland) Order 1981 to make explicit reference to the AETR. Article 81 of that Order 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 Article 81 is amended to clarify that it relates to that Regulation (rather than the AETR).

3.9 Article 81 also 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 Statutory Rule 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.

3.10 Part 3 of the Statutory Rule amends secondary legislation so as to fully implement an enforcement regime for AETR tachograph requirements. It creates three new offences and amends one existing offence 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.

3.11 Regulation 3 of the Passenger and Goods Vehicles (Recording Equipment) Regulations (Northern Ireland) 1996 sets out the offence of failing to install and use recording equipment in accordance with the EU Tachographs 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 3A is inserted to create the equivalent offence of failing to install and use recording equipment in accordance with the AETR.

3.12 The Passenger and Goods Vehicles (Recording Equipment) Regulations (Northern Ireland) 1996 is also amended to include two other offences, as sections 3B and 3C. These entail supplying recording equipment which is not type-approved, and failing to inform the Department where a manufacturer of recording equipment system elements is aware of security vulnerabilities in elements on the market.

3.13 Regulation 8(1)(b) of the Passenger and Goods Vehicles (Recording Equipment) Regulations (Northern Ireland) 1996 is also amended so that the Department for Infrastructure is the competent authority in Northern Ireland for the approval of recording equipment.

3.14 In addition, this Statutory Rule amends fixed penalty and financial deposit legislation. 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 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 Northern Ireland.

3.15 Amendments to the Road Traffic (Fixed Penalty) (Offences) Order (Northern Ireland) 1997, the Road Traffic (Fixed Penalty) Order (Northern Ireland) 2007, the Road Traffic (Financial Penalty Deposit) Order (Northern Ireland) 2012 and the Road Traffic (Financial Penalty Deposit) (Appropriate Amount) Order (Northern Ireland) 2012 ensure that fixed penalty notices can be issued, and financial penalty deposit taken, for the relevant new offences.

3.16 Regulation 4 of the Community Drivers' Hours and Recording Equipment (Exemptions and Supplementary Provisions) Regulations (Northern Ireland) 2009 exempts from the requirements of the EU Drivers' Hours Regulation vehicles with a historic status. This Statutory Rule amends this regulation so that this exemption equally applies for the purposes of the AETR.

3.17 Regulation 40 of the Motor Vehicles (Construction and Use) Regulations (Northern Ireland) 1999 is amended to dis-apply requirement for motor vehicles to be fitted with speedometers capable of indicating, simultaneously, miles and kilometres per hour, if is fitted with AETR compliant recording equipment.

4. Consultation

4.1 Stakeholder consultation was not undertaken in relation to this Statutory Rule as it simply seeks to 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.

5. Equality Impact

5.1 Consideration was given to compliance with section 75 of the Northern Ireland Act 1998. An Equality Screening Exercise was completed and as no equality issues were identified a full Equality Impact Assessment was not considered necessary.

6. Regulatory Impact

6.1 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. While the legislation does apply to activities that are undertaken by small businesses, no specific action is proposed to minimise regulatory burdens on small businesses.

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

6.3 An Impact Assessment has not been prepared for this Statutory Rule because the costs and benefits to business are expected to be minimal.

7. Financial Implications

7.1 There will be no additional cost to the Department in implementing this Statutory Rule as it already has policy and procedures in place to deliver the scheme.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department has considered the matter of convention rights and community law and is satisfied that there are no matters of concern.

9. EU Implications

9.1 The timing of the Statutory Rule is to ensure that obligations under EU law (which requires Member States to implement the AETR) are fully implemented and enforceable prior to the UK's departure from the European Union. On Exit Day, the UK would then become a non-EU European country in much the same way as Switzerland and Norway. This would mean that, as far as tachograph and drivers' hours law is concerned, all UK-EU journeys would automatically fall under the European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR) rules. 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.

9.2 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.

10. Parity or Replicatory Measure

10.1 The Department for Transport compiled parity measures to ensure that domestic legislation made to implement provisions of the EU Regulations and the AETR agreement is fit for purpose on Exit Day.

11. Additional Information

11.1 Not applicable.