EXPLANATORY MEMORANDUM TO

THE DRIVERS' HOURS AND TACHOGRAPHS (TEMPORARY EXCEPTIONS) (NO. 4) REGULATIONS 2021

2021 No. 1207

1. Introduction

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

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

2. Purpose of the instrument

2.1 This Statutory Instrument provides for temporary exceptions to certain provisions of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 ("the Drivers' Hours Regulation") which establishes standard rules for permitted driving times and work patterns for heavy goods vehicle ("HGV") drivers. These temporary exceptions are necessitated by the exceptional circumstances arising from the cumulative impacts of the COVID-19 pandemic across Great Britain and an acute shortage of HGV drivers, which adversely affect the carriage of goods by road. This is being compounded by seasonal increases in demand in the build-up to and through the Christmas period. Supply chains are also exposed to higher levels of risks of disruption in the event of unforeseen circumstances, such as adverse weather or consumer behaviour.

2.2 The temporary exceptions are modifications to certain provisions of the Drivers' Hours Regulation, taking the form of permitted increases to some of the standard driving time limits and permitted changes to some break and rest requirements. The exceptions can be relied upon by HGV drivers undertaking journeys within Great Britain.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Department regrets that this instrument breaches the rule that statutory instruments subject to the negative procedure should normally be laid, and copies provided to the Committee, 21 days before the instrument comes into force. Having reviewed the current risks to supply chains related to acute lorry driver shortages and to the COVID-19 pandemic, the Government is acting promptly to ensure that HGV drivers can, between 1 November 2021 and 9 January 2022, and where necessitated by these exceptional circumstances, continue to amend their permitted driving patterns. This will ensure the continuation of the temporary exceptions to the enforcement of the Drivers' Hours Regulation, which began on 12 July 2021 and ends on 31 October 2021, without a gap.

4. Extent and Territorial Application

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

4.2 The territorial application of this instrument is England and Wales and Scotland. Application of the rules is a devolved matter in Northern Ireland.

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 The instrument will, for the temporary period, make exceptions to the Drivers' Hours Regulation, that can be relied on by drivers and transport undertakings in the circumstances set out in the instrument.

6.2 The Drivers' Hours Regulation outlines the maximum amount of driving time and minimum periods of rest for most HGV drivers and some bus and coach drivers.

6.3 The Drivers' Hours Regulation forms part of retained EU law under Section 3 of the European Union (Withdrawal) Act 2018. It applies both to journeys within the UK and to journeys within the combined geography of the UK and the EU. Articles 14(1) and 25A of the Drivers' Hours Regulation, as amended by S.I. 2019/453, enable exceptions from the usual requirements to be made by statutory instrument for transport operations carried out in exceptional circumstances.

6.4 Prior to the end of the transition period, the Drivers' Hours Regulation required that an Article 14(1) temporary exemption in exceptional circumstances be made after authorisation from the European Commission. The temporary exemption must now be made by statutory instrument.

6.5 This instrument is made under powers provided for in Articles 14(1) and 25A of the Drivers' Hours Regulation. The instrument will provide for temporary exceptions to drivers' hours that continue those made by the Drivers' Hours and Tachographs (Temporary Exceptions) (No. 3) Regulations 2021 (S.I. 2021/1106) which have been in force during the period 4 October 2021 to 31 October 2021. These temporary exceptions are similar (although not identical) to those that were made by the Drivers' Hours and Tachographs (Temporary Exceptions) (No. 2) Regulations 2021 (S.I. 2021/921) under Articles 14(1) and 25A of the Drivers' Hours Regulation and that were in force during the period 9 August 2021 to 3 October 2021.

7. Policy background

What is being done and why?

7.1 Temporary exceptions to the Drivers' Hours Regulation for HGV drivers have been in place for the period 12 July 2021 to 31 October 2021 to ensure critical supply chains are maintained. This is in light of the effects of the COVID-19 pandemic coupled with an acute shortage of HGV drivers, as well as recent unusual fuel buying patterns. These effects have been putting acute pressure on local and national supply chains, particularly in the fuel and food sectors.

7.2 The purpose of the temporary exceptions is to increase the flexibility of driving and work patterns in the current exceptional circumstances. Normally, a driver is limited to 9 hours of driving in a single day, but this can be increased to 10 hours no more than twice in a week. Regulation 3 allows drivers to have a daily driving limit of 10 hours no more than four times a week. This is more consistent with UK practice

applied in the normal domestic drivers' hours rules for goods vehicles, which allow up to ten hours driving during any day on duty. A benefit of the extra hour is to avoid lost deliveries due to delays. Drivers remain restricted to a maximum of 56 hours driving in a week and 90 hours in a fortnight.

7.3 Regulation 4 provides, as an alternative to Regulation 3, an amended weekly rest pattern as a temporary exception to the rules on weekly rests, to allow the possibility of an additional day of driving in a fortnight. Normally, drivers are required to take at least one regular weekly rest period of at least 45 hours and one reduced weekly rest period of at least 24 hours in a two-week period. Regulation 4 allows two consecutive reduced weekly rest periods of at least 24 hours in a two-week period. However, Regulation 4 also stipulates that the reduction in rest must be compensated for by an equivalent period of rest taken before the end of the third week following the week in question. The rest taken as compensation must be taken as an extension to a regular weekly rest period of at least 45 hours but may be divided over two consecutive regular weekly rest periods. Drivers may not combine the two exceptions allowed under Regulation 3 and Regulation 4, and they apply to road transport of goods within Great Britain only.

7.4 The amended weekly rest pattern is similar to a pattern permissible for international road transports by the normal rules. In the case of this exception (but not in the normal international road transport rules), there is an increase in the maximum permitted driving time in a fortnight to 99 hours from the standard 90 hours. Following the initial outbreak of COVID-19 last year, some EU member states increased the permitted fortnightly driving limit by similar or longer durations.

7.5 To protect driver welfare and road safety, these temporary exceptions made to the Drivers' Hours Regulation are limited in scope. For example, they allow drivers to drive an extra hour a day, four times a week (instead of the extra one hour allowed twice a week), if necessary, but not increasing the maximum weekly driving limit of 56 hours.

7.6 In addition, the use of the temporary exceptions is constrained by the requirements of the sector specific Road Transport (Working Time) Regulations 2005, which limit drivers' working hours (which includes driving and any other work) to an average of 48 hours a week over a 17 or 26 week reference period. These regulations also limit drivers to a maximum of 60 hours in any given week, provided the average is still 48 hours. This ensures drivers are not working continuously long hours, even if working under temporary exceptions to the Drivers' Hours Regulation.

7.7 Furthermore, the DfT has issued guidance in the published notification on the use of the temporary exceptions which makes it clear drivers should not be expected to drive while tired and that employers remain responsible for the health and safety of their employees and other road users.

7.8 Additionally, an administrative reporting requirement is currently in place to check the use of the temporary exceptions. This is designed to increase accountability and transparency and ensure that that the temporary changes are only to be used where necessary. This will continue to be in place when the temporary exceptions are extended to 9th January 2022.

7.9 The Driver and Vehicle Standards Agency (DVSA) is responsible for enforcing the drivers' hours and working time rules. DVSA will use the information provided by operators, as part of the administrative reporting requirement, to assist with its

roadside enforcement encounters, undertaking targeted checks and follow-up action at operator premises where necessary, to ensure compliance with the requirements of the temporary exceptions. DVSA will continue to undertake targeted checks at the roadside and at operator premises.

7.10 The Department has not been made aware of any increase in accidents involving HGVs since the temporary exceptions to the drivers' hours rules were first introduced in July 2021 or during temporary exceptions made previously in relation to the COVID-19 pandemic and new border arrangements for the period 23 December 2020 to 31 March 2021.

7.11 In respect of the safety of the temporary exceptions, they have been designed to be as safe as the permanent rules, to avoid any additional risk of cumulative fatigue, and to be within the scope of previous exceptions. The Department emphasises that the extent of the exceptions is far less than exceptions deployed widely in Europe, including those deployed in the UK during 2020 under the direct supervision of the European Commission. The exception for the permitted weekly rest pattern follows a standard pattern in the rules applicable to international traffic. The alternative daily hours extension allows a maximum number of hours which is already permitted on certain days and makes no other changes to the permanent rules. Risks related to cumulative fatigue are controlled by the need for compensatory rest in the case of the weekly rest pattern variation. In the case of the alternative daily hours' extension, they are controlled by the permanent rules being unchanged for cumulative weekly and fortnightly driving time limits. In both cases daily rest limits, breaks between driving days, and working time rules are unchanged by the exceptions.

7.12 Compliance with the permanent rules is not full, although reported rates of non-compliance are affected by checks being targeted towards operations with poorer previous compliance records. There is no evidence of the temporary extensions being associated with poorer compliance. The process of operators notifying their intention to use the exceptions is in place to assist checking that temporary exceptions are being used in accordance with the published guidance.

7.13 Although responses to the consultation from significant respondents were against continuing the temporary exceptions, supply chain pressures remain acute with demand high in the build-up to Christmas. The revised weekly rest pattern allowed in late 2020 (and similar to the pattern in this extension) was used to assist deliveries during December, with the pattern of public holidays in some cases facilitating its effective use. The exceptions are being retained to assist supply chain resilience where required and in the situations applicable as indicated in the published guidance.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 This SI does not amend existing legislation and so no consolidation is needed.

10. Consultation outcome

10.1 Stakeholders, who provided information in the previous stakeholder consultation that ran between 15 September 2021 to 22 September 2021, were directly contacted to

gather any updates to the evidence they provided in the September consultation. Stakeholders included haulage operators and their trade bodies, trade unions representing lorry drivers, food wholesalers and distributors, supermarkets, and fuel/oil suppliers. The devolved administrations (Wales and Scotland) were also notified of the Consultation.

10.2 The consultation conducted by the Department in September sought views on an extension to the temporary exceptions for the period 3 October until 23 January 2022 and so the responses are relevant to this instrument. A summary of the September consultation responses can be found under paragraph 10 of the Explanatory Memorandum to The Drivers' Hours and Tachographs (Temporary Exceptions) (No. 3) Regulations 2021[1].

10.3 Haulage firms stated that they continue to be against drivers' hours relaxations as they make working conditions worse, add extra pressure from customers on drivers and operators to extend working hours, and that the relaxations offer limited extra capacity at the margins. In addition, they indicated that current measures would be insufficient to maintain safety standards for all road users due to negative impacts to driver health and increase in fatigue. Trade Unions raised concerns that this is no longer a temporary measure. All believe that it makes the problem worse by making the industry less appealing to new drivers, worsens gender disparity, and would encourage older drivers to leave the industry. One trade union referenced a study that found that intense shift patterns and inadequate rest time 'suggest that many UK HGV drivers have increased risk of excessive daytime sleepiness, road traffic accidents and chronic disease'[2]. The study reported that 91% of the 329 HGV drivers analysed got less than 7 hours of sleep in a 24-hour period. This is despite the Drivers' Hours Regulation mandating that drivers take a daily rest period of 11 continuous hours in any 24-hour period (which can be reduced to 9 hours no more than three times a week).

10.4 Fuel sector stakeholders have stated that there is no material benefit for drivers' hours relaxations. However, one stakeholder stated that third-party agencies that work in delivering fuel from ports and refineries to their depots spend a greater amount of their time driving and so could benefit.

10.5 Food stakeholders stressed that unless there has been an increase in the availability of Heavy Goods Vehicle (HGV) drivers, then relaxations should remain in place. Another stakeholder stated that it would provide additional support and resources which would be welcome during the peak trading season. The Government has put in place a number of measures to support the industry in addressing the HGV driver shortage but understands that there continues to be a shortfall in driver numbers.

10.6 Drivers' Hours is a devolved matter in Northern Ireland. The Department for Transport engaged with relevant policy colleagues at the Department for Infrastructure in Northern Ireland to keep them informed of its policy position.

[1] https://www.legislation.gov.uk/uksi/2021/1106/memorandum/contents

[2] Sherry AP, Clemes SA, Chen Y, et al. "Sleep duration and sleep efficiency in UK long-distance heavy goods vehicle drivers". Occupational and Environmental Medicine Published Online First: 19 August 2021. doi: 10.1136/oemed-2021-107643

11. Guidance

11.1 Guidance relating to the temporary exceptions running from 12 July 2021 to 31 October 2021 has been published on the gov.uk website. This outlines the process for using the exceptions and emphasises that they are only to be used where necessary (including three conditions to be met) and that driver safety must not be compromised. The guidance is available at the link provided in 11.2 below.

11.2 https://www.gov.uk/government/publications/temporary-relaxation-of-the-enforcement-of-the-retained-eu-drivers-hours-rules-all-road-haulage-sectors-within-great-britain/temporary-relaxation-of-the-enforcement-of-the-retained-eu-drivers-hours-rules-all-road-haulage-sectors-within-great-britain

11.3 Amended guidance in the light of this instrument, about the extent of the temporary exceptions and the conditions related to them, will also be published on the gov.uk website and additionally circulated to key stakeholders, including haulage operators and their trade bodies. Under the EU-UK Trade and Cooperation Agreement, the UK is required to notify the European Commission of the temporary exceptions so that the Commission can disseminate this information to EU member states. The publication and circulation of the notifications follows an established and recognised process.

12. Impact

12.1 There is no, or no significant, impact on 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 because the measure is temporary and is designed to assist the maintenance of supply chains in exceptional circumstances. It will avoid some disruption. There will be no substantive changes to the requirements of the Drivers' Hours Regulation as a consequence of this instrument.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. Small transport operators can use the temporary exceptions if necessary.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses. This instrument relaxes certain aspects of regulation temporarily for all haulage businesses regardless of their size. Business can choose to continue to operate using the normal rules.

13.3 The basis for the final decision to take no specific action to assist small businesses is because this instrument does not modify the permanent requirements for those subject to the drivers' hours rules.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that it will be monitored via roadside enforcement by the Driver and Vehicle Standards Agency who are responsible for enforcement of the Drivers' Hours Regulation in Great Britain. DfT will also monitor the use of the temporary exceptions within Great Britain by requiring operators to inform DfT of their intention to use the exceptions, and to later inform DfT how they were used.

15. Contact

15.1 Aran Sritharan at the Department for Transport Telephone: 07747 695 541 or email: aran.sritharan@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Duncan Price, Divisional Manager for the Freight, Operator Licensing, and Roadworthiness Division, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

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