EXPLANATORY MEMORANDUM
TO
THE PASSENGER AND GOODS VEHICLES (RECORDING EQUIPMENT) (DOWNLOADING AND RETENTION OF DATA) REGULATIONS 2008

2008 No. 198

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

2. Description

2.1 This Instrument will complete the implementation in Great Britain of Regulation (EC) No. 561/2006 (on drivers' hours and recording equipment) by making provision in respect of the downloading of data from digital tachograph recording equipment, as well as record retention. This Instrument amends Part 6 of the Transport Act 1968 by:

- defining the frequency for the downloading of "relevant data" and other data from digital tachographs by operators in Great Britain;
- amending current domestic legislation governing the frequency with which drivers must return analogue record charts to their employers and extending the obligation to cover other hard copy records;
- putting in place new enforcement provisions.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. **Legislative Background**

4.1 EU Regulation (EC) 561/2006:-

- repeals and replaces the existing EU drivers' hours rules (formerly in Council Regulation (EEC) No 3820/85);
- further amends certain aspects of Council Regulation (EEC) No 3821/85, as amended by Regulation (EC) No 2135/98, governing the installation and use of tachographs on those vehicles that are subject to the EU drivers' hours rules; and
- introduces new requirements in respect of data on digital tachographs.

The greater part of the Regulation came into force on 11th April 2007. However, certain elements relating to tachographs came into force on 1st May 2006.

4.2 Although the EU Regulation is directly applicable, some changes to domestic legislation have been required. The main provision necessary for that purpose has been made by SIs. 2005/1117, 2006/3276 and 2007/1819.

4.3 In Great Britain legislation regulating drivers' hours is contained in Part 6 of the Transport Act 1968. To meet the obligations in Regulation 561/2006, in particular with regard to digital tachographs, further implementation is necessary to:-

- set the frequency of, and specific occasions and circumstances when, data must be downloaded from digital tachographs and "smart" driver cards;
- align with the new provisions the domestic rules setting out when drivers are required to return their analogue tachograph charts and other hard copy records to their employer;
- provide specific enforcement measures for these requirements and for article 20(3) (which requires drivers to keep employers informed of relevant activities).

5. Territorial Extent and Application

5.1 This Instrument extends to Great Britain.

6. European Convention on Human Rights

6.1 Jim Fitzpatrick, Parliamentary Under Secretary of State, Department for Transport, has made the following statement regarding Human Rights:

"In my view, the provisions of the draft Passenger and Goods Vehicles (Recording Equipment) (Downloading and Retention of Data) Regulations 2007 are compatible with the Convention rights".

7. Policy Background

7.1 Most drivers of large commercial goods and passenger-carrying vehicles are subject to the EU drivers' hours rules limiting the amount of continuous driving time that drivers undertake and requiring them to take breaks and rest periods. The primary objectives of the EU rules are to promote fair competition and road safety by ensuring that drivers are not forced to work unsocial hours and suffer from driving fatigue. Separate domestic drivers' hours rules apply to those drivers who are specifically exempted from the EU drivers' hours rules.

7.2 In order to enforce the drivers' hours rules (irrespective of whether they are in scope of either the EU or domestic rules), it is vital to have a full and accurate record of drivers' activities. To this end, vehicles subject to the EU drivers' hours rules have for many years been required to be fitted with a tachograph. In its original form - known as the analogue tachograph- this type of recording equipment inscribes vehicle distance, speed and time onto a paper chart; the driver manually enters his personal details into the centre field. Given that such recording equipment has been in use since 1985 its weaknesses have been exploited enabling abuses of the system and manipulation of records. As a consequence, the European Commission adopted new legislation in Regulations (EC) 2135/98 and 1360/2002 which specified a new form of equipment - the digital tachograph - which is designed to record information electronically and therefore more accurately and

more securely (by using digital signatures which guarantee the authenticity and integrity of the data and make it much less vulnerable to abuse and manipulation).

7.3 The coming into force of these measures was delayed by technical hitches and when these were resolved it was decided to integrate the new requirements with revised legislation clarifying and simplifying the EU drivers' hours legislation. That measure was adopted as Regulation (EC) 561/2006. The part of the Regulation setting out the new drivers' hours rules came into force on 11th April 2007 whilst the provisions relating to digital tachograph fitment date and downloading, mostly came into force from 1st May 2006.

7.4 Digital tachographs store records of driver activities in digital memory on a box in the vehicle called the “vehicle unit”, which is used in conjunction with "smart" cards, known as driver cards, which are personalised, secure cards for drivers’ use. The driver card effectively records all hours - and all vehicles - that a driver has driven and the vehicle unit records the usage of a vehicle by the various drivers who have used it. The digital tachograph also includes a printer capable of making print-outs of the information recorded, on which a driver can make manual entries if necessary.

7.5 After a certain period of use data on both the vehicle unit and the driver card is overwritten and lost (and in any case printouts alone cannot for technical reasons provide an irrefutable record of driver activity or vehicle movements). It is therefore imperative that the electronic data is regularly downloaded by the transport operator and driver to which it relates so as to prevent it being accidentally or deliberately overwritten or otherwise lost. Once securely stored that data provides a full and continuous record from which infringements can be detected and, where appropriate, dealt with. Article 10(5) of Regulation (EC) 561/2006 requires Member States (a) to specify the frequency of downloading for “relevant data” and other data and (b) to take whatever measures are necessary to ensure that such data can be made available to enforcement officers for at least 365 days after the date of the recording.

7.6 The purpose of this SI is to support the existing framework for enforcing the EU drivers' hours rules, principally by specifying the circumstances when data on a driver card or vehicle unit must be downloaded. In drafting the downloading provisions the Department has taken into account two main considerations:

- what are the most likely circumstances in which an operator or driver will lose (or lose control of) the data, and
- after what period is it in danger of being overwritten in any event (i.e. what should the “default” period be)?

Proposals on these matters were put out for consultation and the provisions of the SI reflect the outcome of that (as to consultation see paragraph 7.10 onwards).

7.7 In addition to dealing with this principal issue it has been necessary to do two things. First, to make it possible for drivers to observe the provision in Regulation 561/2006 that (to enable periodic checks of their activities to be made) they must keep available for inspection not only their driver cards but also any printouts and hard copy records made over a specified period. Initially this was 15 days but from 1 January 2008 it will be altered to the current day plus the previous 28 days.

7.8 Current domestic legislation requires drivers to return record sheets (i.e. analogue records) relating to them to their employer within 21 days of completing them (the "21-day rule"). That is inconsistent with the new 28-day rule and requires amendment. This Instrument therefore replaces the current provision with a requirement for drivers to return records to their employers within 42 days thus giving the driver an additional 14 days to access these documents before being required to hand them over. The opportunity has been taken to extend the obligation to hard copy records in general for the sake of consistency with other provisions in the 1968 Act covering such records.

7.9 Secondly, it has been necessary to provide for the proper enforcement of Regulation 561/2006. In addition to the provisions making it an offence to contravene article 20(3), the Department is strengthening the provisions covering enforcement action against those transport undertakings which are unincorporated associations and small companies.

7.10 *Consultation.* The Department for Transport carried out a public consultation on the proposed changes to the domestic legislation. The 12 week consultation period began on 18th January 2007 and concluded on 12th April 2007. The consultation document was sent to over 800 consultees and was also published on the Department's website. With one exception, the provisions now contained in the draft SI were circulated as proposals in the consultation document. In particular the "default" periods for downloading from the vehicle unit (56 days) and the driver card (28 days) were highlighted. The exception was that a period of 35 days was suggested rather than 42 days for the return of documents which the draft now provides for.

7.11 20 responses were received, of which only 12 made any substantive comment. An analysis of these was made and a copy of the consultation report is available on the Department's website at www.dft.gov.uk. There was concern in three areas, none directly linked to the actual frequency of downloading, which received broad support. The concerns were (a) the potential burden on industry in respect of the time it takes to download data, (b) the relationship and handling of data between those operators who use leased vehicles, and those who lease them out (so as to ensure that no one unwittingly breached the data protection rules) and (c) the problem of providing data from driver cards that might be lost, stolen or malfunctioning, or from vehicle units that were faulty or had ceased to work.

7.12 On the first point, the Department has concluded that the only data which could be classed as "relevant data" (and therefore required by the EC Regulation to be downloaded more frequently) can be downloaded - using a dedicated memory stick, for example - in no more than 6 or 7 minutes. The other data is contained on just one file - the detailed speed file - and although it is much greater in volume it does not in itself provide evidence of compliance with the drivers' hours rules. There is consequently no need for an operator to download it unless required to do so by an enforcement officer following an incident.

7.13 On the second point, the Department takes the view that responsibility for any data recorded by the digital tachograph remains with the transport operator, who is liable for any loss of data, in precisely the same way as he is responsible for ensuring that other aspects of the drivers' hours rules are observed.. Whether they do this themselves (for example by using their own Company Card to control access to the vehicle unit) or by entering into a contractual arrangement with the hire or lease company is a commercial matter.

7.14 The final point (relating to lost, stolen or malfunctioning driver cards or onboard equipment) is either covered by existing legislation, or this SI, which does not require downloading if that is shown to be technically impossible. (If a driver card is lost or stolen then drivers must report the fact to DVLA as soon as possible and, at the same time, apply for a replacement.)

7.15 The period of 35 days for retention and return of records on which the Department consulted was altered to 42 days following requests from some industry sources for a longer period and confirmation from the Vehicle and Operator Services Agency that this would not inhibit enforcement work.

8. **Impact**

8.1 A Regulatory Impact Assessment is attached at **Annex A.**

8.2 The impact on the public sector is minimal. The main public body affected will be VOSA, and to a lesser extent the police, as they are responsible for enforcing the EU Regulation (EC) 561/2006. As the Regulation does not place any additional duties on enforcement bodies this Instrument should not result in increased costs for them.

9. **Contact**

David Meredith at the Department for Transport, Great Minster House, 76 Marsham Street, London can answer any queries regarding this Instrument.

Tel: 020 7944 2123, or e-mail: david.meredith@dft.gsi.gov.uk,

FINAL REGULATORY IMPACT ASSESSMENT

1. Title of proposal

The Passenger and Goods Vehicles (Recording Equipment) (Downloading and Retention of Data) Regulations 2008

1.1 The Regulations specify minimum periods for downloading of data acquired by digital tachographs and amend existing domestic legislation regarding record retention.

2. Purpose and intended effect

2.1 Objective

2.1.1 The Regulations are necessary to ensure that data acquired by digital tachographs can be made available to enforcement authorities. There is also a need to amend existing legislative requirements on record keeping to avoid a conflict with new EU requirements.

2.2 Background

2.2.1 European drivers' hours and tachograph rules require most HGVs and some buses and coaches to be equipped with a tachograph to monitor drivers' driving times and rest periods through recording the time, speed and distance of journeys. The rules also require that drivers and operators keep records of hours worked. The existing generation of analogue tachographs recorded the information on paper discs. However, due to increased abuses and manipulation of the equipment, digital tachographs were developed and, for vehicles first brought into service on or after 1 May 2006, these new tachographs are now mandatory under European legislation[1]. The digital tachograph records the information electronically.

2.3 Rationale for government intervention

[1] Council Regulation (EC) No 2135/98 amending Regulation (EEC) No 3821/85 (the use and installation of tachographs in road transport)

2.3.1 A number of changes have already been made to domestic regulatory requirements to reflect the introduction of this new digital technology. These Regulations complete this process.

2.3.2 Directly applicable EU legislation requires Member States to ensure that the data necessary to enforce the rules can be made available for at least 365 days after recording, and under conditions which guarantee the security and accuracy of the data. However the rules left the frequency of data downloading to individual Member States. There is therefore a need to introduce domestic legislation to specify the frequency of downloading.

2.3.3. Directly applicable EU legislation imposes record keeping requirements which are inconsistent with existing domestic legislation. There is therefore a need to amend the domestic legislation to avoid conflict and placing drivers and operators in a position where they cannot comply with the law.

3. Consultation

3.1 Within government

3.1.1 In developing the policy principles behind these regulatory changes, the Department worked closely with the Vehicle and Operator Services Agency (VOSA) and the Police who have responsibility for enforcing the EU drivers' hours rules requirements in Great Britain,

3.1.2 EU drivers' hours rules are a reserved matter in respect of Scotland and Wales. These devolved administrations are aware of the proposals reflected in this RIA, and have been consulted on the proposed changes. In respect of Northern Ireland, the EU Regulation is a transferred matter so separate legislation will be prepared by the relevant Northern Ireland Departments.

3.2 Public consultation

3.2.1 This Final Regulatory Impact Assessment reflects the outcome of the Department's consultation exercise on the proposed Regulations. The key trade associations have been involved in this process. A list of consultees is available from the Department's website www.dft.gov.uk, as is a summary of responses.

4. Options

4.1 Downloading of data

4.1 1. When considering how often data should be downloaded by UK operators and drivers, we applied the main principles that govern the general management of data[2] by transport operators. These principles are that:

- transport operators are ultimately responsible for their own data;
- they have to be considered as liable for any loss of data, and
- they must, therefore, be in a position to hand over data, or make it accessible to, the enforcement authorities.

4.1.2 In considering the options we had to strike a balance between the risks that the periods between downloading are so long that data is overwritten on either the Vehicle Unit or the Driver Card (once the digital memory is filled data continues to be stored through overwriting the initial data); and that data is available at the operators premises for enforcement officers. We also had to make sure, as far as possible, that the cost in time and resource involved in downloading the data had to be acceptable.

4.1.3 We consulted on 3 options for downloading.

Option A - downloading arrangements at operator's discretion

4.1.4 Under this option, each transport operator would be responsible for establishing when data should be downloaded (from either the Driver Card or digital tachograph Vehicle Unit) by their employees. This would allow different types of operators to set different requirements tailored to the specific circumstances of their

[2] As set out in the report "Digital tachograph and data management" produced for the European Commission by the Swedish National Road Administration on 25 September 2003.

business. For example, a multi-drop delivery operation might need to download from Driver Cards every 20 days because of the volume of data stored - whereas a long distance operator may find it more appropriate to download data every 28 days. This would also give operators the flexibility to align downloading requirements with their existing pay or other management systems (assuming this was possible without data being lost).

4.1.5 In order for enforcement to be consistent, we proposed that under this option, every operator would need to have a written policy which was clearly communicated to their employees and available for inspection by our enforcement officers at VOSA at any time. The operator would be required to ensure (and demonstrate to VOSA) that this policy:

- met the needs and circumstances of their operations;
- was robust enough to ensure that all data was regularly downloaded and that none was over-written or otherwise lost,; and
- generated an accurate and complete record of vehicle and driver activities that was sufficient to demonstrate compliance with the EU drivers' hours rules and which could be made available to an inspecting officer whenever he/she requested

Option B - set a tight statutory maximum time between downloads

4.1.6. This option would involve setting a statutory maximum time between downloads - effectively saying that data should be downloaded at least every “X” days from the Driver Card and every “Y” days from the Vehicle Unit.

4.1.7 Under this option, the statutory maximum would be set at a level that ensured sufficiently frequent downloading (for example every 14 days for Driver Cards and 56 days for Vehicle Units) to avoid any possibility of data being overwritten. Because of this there would be no need for a separate responsibility (and hence resource) to be imposed on the operator to ensure that data was not overwritten**.**

Option C - set a relatively lax maximum time between downloads alongside a statutory requirement for operators to ensure that data is not overwritten

4.1.8. This would be a variation on option B, with a longer maximum time between downloads for Driver Cards - say every 28 days - but retaining a responsibility on operators and drivers to nevertheless ensure that data was not overwritten or otherwise lost (for instance in those operations where, say, 28 days would be too long a gap between downloading to ensure that data was not over-written). The legislation would require that data was downloaded at specific time intervals or more frequently if necessary to ensure that data is not overwritten. VOSA would have the power to take enforcement action if either: downloading did not take place within the specified intervals; or there was missing data as a result of a consistent failure to download on a more frequent basis.

4.1.9. The Department expressed a preference for **"Option C"** in the consultation document because it minimised the potential administrative burden whilst ensuring that data was downloaded as frequently as necessary. The consultation showed that industry preferred this option.

4.1.10 In addition to three options for regular downloading, we also proposed that data should be downloaded in the following specific circumstances to avoid the risk of it being lost or otherwise becoming inaccessible:

Driver Cards,

a. before a driver ceases to be employed by an operator, or - where operators use self-employed drivers or drivers hired from an agency - at the end of the period for which that driver is used,;
b. if an operator discovers that the card is malfunctioning;
c. where downloading is only possible through the medium of the vehicle unit, whenever the operator loses control of the vehicle, either temporarily or permanently;

Digital tachograph vehicle units,

a. whenever a vehicle, fitted with a digital tachograph vehicle unit, is sold or no longer used by an operator, or if the vehicle unit itself is decommissioned from service;
b. if an operator discovers that the data is in imminent danger of being lost or overwritten (whether through a malfunction of the equipment or otherwise);
c. whenever a driver ceases to be employed by an operator (whether permanently employed, hired or through an agency).

4.1.11 These proposals were generally supported by industry and we have included them in the Regulations. There was some confusion about the respective responsibilities in relation to hired vehicles. It remains the operator's responsibility to ensure that arrangements are made to enable data to be downloaded from vehicle units in hired vehicles. They can do this themselves or make arrangements for the hire company to download data on their behalf.

4.2. Retention and production of records

4.2.1 Current UK legislation requires drivers to return records of their driving to their employers within 21 days. Under the new EU drivers' hours regulation, from 1 January 2008, drivers will be required to carry with them records for the current day and the previous 28 days (i.e. 29 days in all). This will be inconsistent with the requirement to return records to employers within 21 days. To remove this inconsistency, we proposed in the consultation document to replace the so called "21 day rule" with a requirement to return records within 35 days.

4.2.2 Responses to the consultation document generally favoured this approach although some argued for a longer period. In the light of this we have decided to extend the period to 42 days. VOSA are content that this will not impact adversely on enforcement work. it will be open to employers to ask for records to be returned within a shorter timescale if they wish.

5. Costs and benefits

5.1 Sectors and groups affected

5.1.1 The Regulation would primarily affect those drivers and operators working in the road freight and inter-urban road passenger transport sectors, and who are subject to the EU Regulations. VOSA and the police, who have responsibility for enforcing the requirements of the EU Regulation, would also be affected.

5.1.2 For the most part, vehicles that are in-scope of the EU drivers' hours rules must be fitted with a tachograph and the driver must use that tachograph to record and demonstrate his or her compliance with the EU drivers' hours rules.

5.1.3 There are approximately 100,000 HGV operators, 8,500 bus and coach operators and about 450,000 drivers in Great Britain who are subject to the EU drivers' hours rules. There are approximately 441,100 goods vehicles over 3.5 tonnes licensed in Great Britain. There are also 103, 000 buses, of which we estimate 30,000 to operate in-scope of the EU Rules.

5.2 Benefits

5.2.1 The introduction of digital tachographs will provide substantial overall benefits for operators (see paragraph 5.3.7). The benefit of the specific downloading requirements is to ensure that data on drivers' hours recorded on driver cards and digital tachograph vehicle units will be available to enforcement authorities. This is necessary if the drivers hours rules are to be effectively enforced. If data is not downloaded regularly it is liable to be lost as a result of it being over-written by new data.

5.2.2 The main benefit of the increased time limit for employees to return records to their employer is to prevent a conflict with the forthcoming requirement under EU legislation for drivers to retain records for the current day and previous 28 days in their vehicle. The extended period of 42 days will provide more leeway for employers to secure return of records before they are at risk of committing an offence.

5.3 Costs

Cost to industry

Cost of downloading

5.3.1 The EU provisions requiring the fitting and use of digital tachographs are directly applicable. Transport operators have a responsibility to make data available and accessible to enforcers in order to demonstrate compliance with the drivers' hours rules. It is also a standard condition of an operator's licence that satisfactory arrangements are made to ensure compliance with EU drivers' hours rules. Operators therefore already need to download data from vehicles equipped with digital tachographs at regular intervals and this will involve costs. The effect of these Regulations is to specify the circumstances in which data must be downloaded: more frequent downloading will lead to an increase in some of these costs.

5.3.2 There are two broad areas of costs associated with the downloading process. The first relates to the cost of equipment needed to download Driver Cards and Vehicle Units. These include Company Cards to download drivers' personal data from Vehicle Units (available from DVLA at a cost of £38 each and valid for five years); a computer and associated software and downloading equipment (typically around £400 to £500) or a dedicated "memory stick" (typically around £160 to £190). These costs are not affected by the frequency of downloading.

5.3.3 The second relates to the administrative costs associated with the downloading process. These will depend on the frequency of downloading. In our consultation paper, we estimated that it takes a driver 1 minute to download a driver card onto a computer plus a further 1 minute of administrative resource. These estimates were generally supported and not seriously opposed durin gthe consultation. We also estimated that it takes around 12.5 minutes to download data from a vehicle unit. During the consultation process, some respondents queried the last figure and suggested that downloading could take between 25 and 45 minutes. It transpired there had been some confusion about which files need to be downloaded from vehicle units. In order to provide data

needed to demonstrate compliance with the drivers' hours rules it is not necessary to download the detailed speed data file which accounts for the bulk of the data on a vehicle unit and could lead to a much longer downloading time. The Regulations make it clear that this file does not need to be downloaded at ferquent intervals but only when necesssary for the purpose of accident investigation and the investigation and prosecution of traffic offences. A one off trial showed that the relevant file could be downloaded in 6 to 7 minutes although the actual time in any case will depend on the equipment in use and the nature of the data. We have therefore continued to assume a time of 12.5 minutes for downloading the relevant data.

5.3.4 On the basis of the above times and the assumptions put forward in the consultation paper - which were not challenged - that drivers (or others involved in the downloading process) have an annual wage of £25,000 (£479 per week) and work a 40 hour week the cost of downloading a driver card would be 40p and the cost of downloading a vehicle unit would be £2.49. With the chosen option C this would equate to an annual cost of £5.20 per driver using vehicles equiped with digital tachographs and an annual cost of £16.18 for each vehicle equipped with a digital tachograph. With option B the annual cost per driver would increase to £10.40 per driver. It is not possible to assess the annual cost of option A as the frequency of downloading would depend on the pattern of usage. In additoin under that option there would be the administration costs associated with the preparation and communication of the downloading policy. These have not been quantified.

5.3.5 Under option C, some operators may need to download more frequently because of the nature of their operations. It is not possible to quantify this. Furthermore, in addition to regular downloading, operators will also be required to download data in the specific circumstances described in paragraph 4.1.10. The costs of this additional downloading could be significant for operators who regularly hire or borrow vehicles for short periods, or who rely extensively on agency drivers.

5.3.6 It will be many years before all or a substantial majority of vehicles are

equipped with digital tachographs. However, using the unit costs in paragraph 5.3.4 and the numbers of drivers , operators and vehicles in paragraph 5.1.3 and assuming that all vehicles are equipped with digital tachographs would produce an annual cost to industry of around £10.0 million for option C and £12.3 million for option B.

5.3.7 These costs to industry need to be seen in the context of the overall benefits accruing from the introduction of digital tachographs. Although there will be initial cost burdens associated with training and the procurement of equipment, in the longer term substantial savings are expected to be achieved. These will include avoiding the need to buy paper tachograph charts and easier computerised analysis of data. As reported in the Department for Transport's Simplification Plan the introduction of digital tachographs are expected to provide overall net annual savings in administrative burdens of £15 million in 2009.

Return of records

5.3.8 Increasing the time limit for employees to return records to their employer will not have any costs impact on industry.

Costs to Enforcement Agencies

5.3.8 The Regulations should not result in increased costs for the enforcement agencies.

Costs to the Court system

5.3.9 The Regulations should not lead to an increase in Court activity.

Environmental and Social Costs

5.3.9 None.

6. Small Firms Impact Test

6.1 Both the road haulage and inter-urban road passenger transport sectors contain a significant percentage of small businesses. The costs established in section 5 above have taken this into account and there will not be a disproportionate impact on smaller firms. Enforcement procedures, and therefore costs, already exist for driver's hours regulations. A Small Business Test was carried out in March 2006 in conjunction with Department for Trade and Industry's Small Business Unit. 250 small businesses were contacted and invited to comment. Only 8 businesses responded. Of these, 6 did not consider that there would be anything more than possibly a marginal impact on their business. The remaining two were concerned with the cost of purchasing the necessary equipment to download the data from digital tachographs. These would apply regardless of these Regulations.

7. Competition assessment

7.1 The Regulations are not expected to affect the competitive position of any operator or class of operators in the road haulage and inter-urban road passenger transport sectors.

8. Enforcement, sanctions and monitoring

8.1 Enforcement of the Regulations will be carried out as part of VOSA's and the police's enforcement activity in relation to the EU drivers' hours rules and other legislation covering the operation of commercial vehicles. Sanctions are comparable with those applicable for other provisions of the EU drivers' hours rules.

9. Implementation and delivery plan

9.1 The Regulations complete a process of changes to domestic legislation to reflect the introduction of digital tachographs. Subject to Parliamentary scrutiny, it is intended to bring them into force as soon as possible. All stakeholders who responded to the consultation paper have received a copy of the Department's analysis of responses and proposed way forward. They will be informed when the Regulations

have been made. Guidance will be included in a revised version of VOSA's guide to all aspects of the drivers' hours and tachograph rules which is expected to be published in November.

10. Post-implementation review

10.1 The effectiveness of the drivers' hours enforcement regime will be kept under review in the light of practical experience. VOSA, as the main body responsible for enforcing the EU drivers' hours rules, will have an important role to play in identifying whether enforcement measures - particularly those associated with the recording, downloading and availability of data from digital tachographs - are sufficient. Consideration will also be given to whether the regulations have caused any unforeseen or unintended loopholes that need to be closed.

11. Summary and recommendation

11.1 Based on the analysis of costs and benefits above and the consultation responses received, the Department recommends that Option C is chosen.

11.2 This means that data must be downloaded in the following circumstances:

Driver Cards

(a) before the driver ceases to be employed by his/her company, or - where companies use self-employed drivers or drivers hired from an agency - at the end of the period for which that driver is used, and;

(b) if the company discovers that the card is malfunctioning;

(c) where downloading is only possible through the medium of the vehicle unit, whenever the operator loses control of the vehicle, either temporarily or permanently;

(d) in any event, at least once every 28 days or more frequently if data is likely to be over-written;

Vehicle Units

(a) whenever a vehicle, fitted with a digital tachograph vehicle unit, is sold (or when it is no longer used by the operator), or if the vehicle unit itself is decommissioned from service;

(b) if the company discovers that the data is in imminent danger of being lost or overwritten (whether through a malfunction of the equipment or otherwise);

(c) whenever the transport undertaking using the vehicle is requested to do so by an enforcement officer;

(d) whenever a driver ceases to be employed by the transport undertaking (whether permanently employed, hired or through an agency);

(e) and in any event, at least once every 56 days, or more frequently if data is likely to be over-written.

11.2 The Department also recommends that the timescale within which drivers must return their records to their employers should be increased from the current 21 days to 42 days.

Summary costs and benefits table

Requirements to set the frequency of downloading data from digital tachograph vehicle units and driver cards		
Option	**Total benefit per annum: economic, environmental, social**	**Total cost per annum:** **- economic, environmental, social** **- policy and administrative**
A	The benefit of the requirements is to ensure that data on drivers' hours recorded by digital tachographs is available to enable effective enforcement of drivers hours rules. This option favours larger operators or those with management systems already in place; but offers limited benefits over other options.	Impossible to quantify, but would probably involve significant administration costs for operators - especially to smaller business - in order to be compliant.
B	Again, the benefit of the requirements is to ensure that data on drivers' hours recorded by digital tachographs is available to enable effective enforcement of drivers hours rules. This option should guarantee that data is not lost through over-writing.	Annual cost to industry could rise to £12.3m when all vehicles equipped with digital tachographs. Significantly more expensive than option C.
C	Again, the benefit of the requirements is to ensure that data on drivers' hours recorded by digital tachographs to enable effective enforcement of drivers hours rules. This option provides more flexibility to address different business operations.	Annual cost to industry could rise to £10.0m when all vehicles equipped with digital tachographs. Significantly less expensive than option B.

Requirement for drivers to return paper records to their employer within 42 days of creating them		
	Total benefit per annum: economic, environmental, social	**Total cost per annum:** **- economic, environmental, social** **- policy and administrative**
.	Main benefit of the increased time limit for employees to return records to their employer is to prevent a conflict with the forthcoming requirement under EU legislation for drivers to retain records for the current day and previous 28 days in their vehicle. The extended period of 42 days will provide more leeway for employers to secure return of records before they are at risk of committing an offence.	None

13. Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed …*Jim Fitzpatrick*..

Date 26 November 2007

Jim Fitzpatrick, Parliamentary Under Secretary of State, Department for Transport

Contact point for enquiries and comments regarding this RIA:

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Transposition Note

Regulation (EC) No. 561/2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No. 2135/98) and repealing Council Regulation (EEC) No 3820/85 (drivers' hours and recording equipment in vehicles)

Regulation (EC) No 561/2006, amongst other provisions, places a requirement on Member States to prescribe in national law the frequency of downloading data produced by digital tachographs. This Transposition Note covers the articles within the Regulation imposing that requirement and provisions dealing with other minor matters.

The Passenger and Goods Vehicles (Recording Equipment) (Downloading and Retention of Data) Regulations 2008 amend Part 6 of the Transport Act 1968 as necessary to implement these requirements in Great Britain, making consequential changes to domestic legislation to ensure its compliance in the area to which they apply. The amendments are explained in the table below.

Article	**Objectives**	**Implementation**	**Responsibility**
10(5)(a)(i)	Member States to ensure that data held on digital tachographs – both driver cards and vehicle units – which is "relevant" to the enforcement of the EU drivers' hours rules is downloaded at intervals frequent enough to ensure that the data is not lost as a result of it being over-written or otherwise, and to ensure that other data is downloaded as and when appropriate.	Regulation 2 inserts into Part 6 of the Transport Act 1968: (a) new sections 97D and 97E prescribing the circumstances in which "relevant data" must be downloaded from driver cards and vehicle units (and specifying minimum frequencies for downloading); and (b) new section 97F prescribing the circumstances in which other data as well as relevant data must be	Policy responsibility rests with the Secretary of State for Transport. Responsibility for enforcement rests with the Vehicle and Operator Services Agency (VOSA) and the police.

		downloaded.	
10(5)(a)(ii)	Member States to ensure that downloaded data is accessible to enforcement authorities for 12 months	Regulation 2 inserts new sections 97G(2) and 97H into Part 6 of the Transport Act 1968 empowering enforcement officer to require undertakings to make data accessible and making it an offence to contravene that requirement or to fail to retain data for a year.	VOSA and the police
19	Requires Member States to impose appropriate penalties	Regulation 2 inserts new section 97G(1) making it an offence to contravene sections 97D to 97F; and regulation 3 inserts new sections 102B and 102C into Part 6 of the Transport Act 1968 strengthening enforcement powers in respect of unincorporated and corporate bodies	Policy responsibility rests with the Secretary of State for Transport. Responsibility for enforcement rests with the VOSA and the police.
20(3)	Requires drivers to provide sufficient information to their employers to enable them to comply with drivers' hours rules	Regulation 4(a) inserts new subsection (11D) in section 96 of the Transport Act 1968 making it an offence to fail to comply with article 20(3).	Policy responsibility rests with the Secretary of State for Transport. Responsibility for enforcement rests with the VOSA and the police.
26(4) (fourth indent)	Amends art. 15(7) of Regulation 3821/85. Drivers must be able to	Regulations 2 and 4(c) replace current section 97A of the Transport Act 1968	Policy responsibility rests with the Secretary of State for

	produce on demand their driver cards and all paper records for current day and (as from 1.1.08) previous 28 days	with new section 97C making it an offence if a driver does not return to his employer all paper records within 42 – as opposed to 21 - days of making them, (so that it will be possible for a driver to retain those records for 29 days without breaking the law).	Transport. Responsibility for enforcement rests with the VOSA and the police.