EXPLANATORY MEMORANDUM TO

THE PASSENGER AND GOODS VEHICLES (RECORDING EQUIPMENT) (TACHOGRAPH CARD) REGULATIONS 2006

2006 No. 1937

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 is intended to help prevent the fraudulent acquisition, and/or misuse, of digital tachograph smart cards. These cards, either driver cards, workshop cards, company cards or control cards, are used in connection with recording equipment that complies with Annex 1B and II to the Community Recording Equipment Regulation as defined in Section 97 of the Transport Act 1968 (i.e. Council Regulation (EEC) 3821/85 as amended). Such equipment, commonly known as the digital tachograph, is used to record driver and vehicle activity to ensure compliance with the EU drivers' hours rules. Most heavy goods vehicles and some coaches are affected.

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

3.1 None.

4. Legislative Background

4.1 Most drivers of large commercial vehicles are subject to the EU drivers' hours rules as defined in Commission Regulation (EEC) 3820/85. These rules limit continuous driving time and require drivers to take minimum breaks and rest periods. This helps to reduce the risks of drivers becoming involved in fatigue-related accidents and thus improves road safety.

4.2 In order to enforce the drivers' hours rules, it is important to have a record of drivers' activities. Therefore, vehicles subject to the EU drivers' hours rules have to be fitted with a tachograph in accordance with Commission Regulation (EEC) 3821/85. The tachograph is a device which automatically records drivers' activities.

4.3 Until recently, the only type of tachograph available was the analogue tachograph, which had to conform with Annex I to Regulation 3821/85. Analogue tachographs record drivers' activities on paper charts. However, in 1998, EU Regulation 2135/98 was adopted, amending 3821/85 and paving the way for the introduction of digital tachographs, conforming to a new Annex IB. Since 1 May 2006 the fitment of digital, rather than analogue, tachographs to those new vehicles which require tachographs has been mandatory (Regulation (EC) No.561/2006).

4.4 Digital tachographs record drivers' activities in digital memory rather than on paper. They operate in conjunction with four different types of smart card; driver cards (held by drivers); company cards (held by owners or holders of vehicles); workshop cards (held by those authorised to work on digital tachographs); and control cards (held by enforcement officers).

4.5 Of the four types of digital tachograph smart card, driver cards and workshop cards carry the most significant potential for misuse. Improper use of drivers' cards (for instance, a particular driver using two different cards), could lead to deception and concealment of relevant driving data.
Workshop cards, which are used in connection with the installation and repair of digital tachographs, can be used to change or manipulate vital vehicle characteristics (which affect the calculations made by the digital tachograph vehicle unit regarding time and distance travelled).

4.6 Part VI of the Transport Act 1968 includes various enforcement provisions relating to the EU drivers' hours rules. These were amended by the Passenger and Goods Vehicles (Recording Equipment) Regulations 2005 (SI 2005/1904) in order to reflect the introduction of digital tachographs (as well as the continued use of analogue tachographs on vehicles brought into use before May 2006).

4.7 However the amendments to the 1968 Act did not provide detailed regulation of the issue and use of tachograph cards *per se* - hence this Instrument.

4.8 Similarly, while conditions are set for the conduct and activities of workshops and fitters in The Passenger and Goods Vehicles (Recording Equipment) Regulations 1979 (SI 1979/1746) they are concerned primarily with fitment of tachographs and were drafted when only analogue tachographs existed. They continue to be relevant. But digital tachographs require certain additional operations and the use of the workshop card with an associated Personal Identification Number (PIN) . The issue and use of such cards needs regulation because fraudulent applications for, and subsequent use of, such workshop cards provide the possibility to manipulate the way data is calculated, thereby undermining the integrity of the whole system.

5. Extent

5.1 This Instrument applies to Great Britain. Similar provisions for Northern Ireland will follow shortly after this Instrument.

6. European Convention of Human Rights

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

7. Policy Background

7.1 The EU drivers' hours and tachograph rules are directly applicable, but they require the UK to make adequate provision for the enforcement of their requirements. Such enforcement includes the imposition of penalties.

7.2 The rules have road safety implications. Fatigue leads to a higher incidence of traffic accidents due to driver sleepiness and the consequences if a large vehicle is involved in an accident are potentially far more serious than for a small vehicle. An effective regime for enforcing both the drivers' hours rules and the correct maintenance and operation of the recording equipment itself should help to prevent such road accidents.

7.3 This Instrument is intended to help prevent fraudulent applications for, and misuse of, digital tachograph cards. It compliments existing enforcement Regulations designed to ensure compliance with the EU Drivers' Hours Rules. Specifically, this Instrument

(a) prohibits:-

- the use by a person of more than one driver card,
- the use by a person of a driver card of which he is not the holder,
- the use by a person of a forged or altered driver card,
- the use by a person of a driver card issued as a result of an incorrect application, and,
- the making of false statements in applications for cards.

Breach is an offence, the penalty depending upon the nature of the breach.

(b) prohibits:-

- the use by a person of more than one workshop card, or PIN, for each workshop in which he works,
- the use by a person of a workshop card or PIN of which he is not the holder or in a place which is not his workplace,
- the use by a person of a forged or altered workshop card, and,
- the use by a person of a workshop card issued as a result of an incorrect application,

- the divulging of a PIN.

Breach is an offence, the penalty depending on the nature of the breach,

(c) prohibits others from causing or permitting a person to breach such prohibitions the maximum penalty being, if the offender is convicted on indictment, two years and a fine, or if the offender is convicted summarily, the statutory maximum,

(d) requires written notification of lost or stolen tachograph cards to be given to the Secretary of State and the return to him of damaged or malfunctioning cards. Failure to comply is an offence punishable by a level 5 fine,

(e) requires a card holder to notify the Secretary of State of any details on a tachograph card requiring correction and to return it for correction. The Secretary of State may also require the return of cards issued erroneously for correction. Failure to comply is an offence punishable by a level 5 fine,

(f) requires the surrender of a tachograph card which identifies another person as the holder, which has been falsified or which has been issued as a result of a false application. Such cards may also be confiscated by a constable or VOSA examiner. Failure to surrender such a card is an offence punishable by a level 5 fine

7.4 The instrument does not subject company and control cards to the same level of regulation as driver and workshop cards as they do not carry the same level of risk. However, the provisions applying to tachograph cards generally apply to all four types of card..

7.5 The overall aim of this Instrument is to support the existing framework for enforcing the EU drivers' hours rules, and to contribute to maintaining the security of the digital tachograph system across the European Union.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this Instrument as it has no additional impact on business, charities or voluntary bodies. .

8.2 Regulatory Impact Assessments were prepared for earlier Instruments relating to the issue and use of "smart" cards:-

- the Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card Fees) Regulations 2005 (SI 2005/1140) , and,
- the Passenger and Goods Vehicle (Recording Equipment)

Regulations 2005 (SI 2005/1904)

8.3 The Instrument should have a negligible impact on the main public bodies responsible for enforcing the EU Drivers' Hours Rules, namely, the Vehicle and Operator Services Agency (VOSA) and the Police, since they are already charged with enforcing the rules.

9. Contact

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