EXPLANATORY MEMORANDUM TO

THE ROAD VEHICLES (CONSTRUCTION AND USE) (AMENDMENT) REGULATIONS 2024

2024 No. 1084

1. Introduction

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

2. Declaration

2.1 Lilian Greenwood MP, Parliamentary Under Secretary at the Department for Transport confirms that this explanatory memorandum meets the required standard.

2.2 Pauline Reeves, Deputy Director for Road Safety, at the Department for Transport confirms that this explanatory memorandum meets the required standard.

3. Contact

3.1 Darren Freezor at the Department for Transport, Telephone: 07780 224904 or email: Darren.freezor@dft.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends regulation 110 of the Road Vehicles (Construction and Use) Regulations 1986 (S.I. 1986/1078) ("the C&U Regs 1986") by introducing a new exemption in respect of devices used by the emergency services that have two-way radio communication embedded in an electronic device. The amendment removes any ambiguity as to the extent to which the current exclusion of two-way radios applies in respect of equipment, such as an Airwave Tetra, where the two-way radio capability is embedded within a device with additional functionality.

Where does the legislation extend to, and apply?

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

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

5. Policy Context

What is being done and why?

5.1 This instrument amends regulation 110 by introducing a new exemption to clarify that the current devices that have radio communication embedded in an electronic device (Airwave Tetra that works on radio frequencies), and the forthcoming Emergency Services Network (ESN - that will use the mobile network), are not prohibited as

hand-held devices. This will not represent a material change in the status quo, because the previous two-way radios used by the emergency services were not prohibited.

5.2 The exemption will maintain the position that communication devices used by the emergency services are exempted from the scope of the prohibition. This is important because there are occasions when emergency services drivers need to be able to communicate with base and other colleagues whilst driving. For example, having to take precautionary actions, like parking every time emergency services drivers need to speak to communicate in hand-held mode, would likely be onerous and delay their crucial operations.

What was the previous policy, how is this different?

5.3 Regulation 110(1)(a)-(b) of the C&U Regs 1986 prohibits a person from driving a motor vehicle on a road if he is using a hand-held mobile telephone or a hand-held device of a kind specified in paragraph (4).

5.4 In its original form, regulation 110 specifically removed two-way radio use, using certain specified frequencies, from the prohibition of using a hand-held device while driving. This was because government accepted that two-way radio use was essential within the emergency services who have long been reliant on them to maintain full situational awareness, and outside of those services, its use (for example by delivery drivers, taxi cabs, amateur and CB radio enthusiasts, abnormal load escorts etc.) did not constitute the same road safety risk as mobile phones largely because of the concise nature of two-way radio conversations. Moreover, the degree of physical manipulation required to communicate via two-way radio is minimal. They operate on the basis of “press-to-talk” which means that each individual radio operates continuously as a receiver, allowing drivers to monitor all transmissions on their operating network without having to touch the radios, and when they need to send a message they simply press down a button for the duration of their contribution, which, in the case of emergency services drivers, is likely to be concise.

5.5 The two-way radio communication devices used by the emergency services now, and which will be used in the future, are more technologically sophisticated.

5.6 It is therefore necessary to remove any ambiguity as to the extent to which the current exclusion of two-way radios applies in respect of the two-way radio communication devices now being used. Ambiguity in the relevant law could risk drivers taking precautionary action to stop and park up every time they wanted to use their two-way radio in hand-held mode. That is neither a reasonable nor a sensible expectation to place on drivers whose jobs involve responding to emergency situations where immediate communication is of the essence and can mean the difference between life and death.

5.7 In practical terms, the Airwave Tetra devices are capable of wider interactive communications functions and the Independent Office for Police Conduct has advised police forces that they should not be used in hand-held mode, even just for the “press-to-talk” function. Government is clear that emergency services drivers should be permitted to use Airwave Tetra in hand-held mode.

5.8 The instrument introduces an exemption from the prohibition of using a hand-held mobile phone for emergency services drivers for drivers who are permitted to use a communications system authorised by the Secretary of State. In practice this means the Airwave Tetra system and ESN. The exemption will only apply to people whose access to the networks is 'controlled by the Secretary of State', so no private individuals or businesses will be able to take advantage of it.

5.9 The drivers will only be permitted to use the devices in press-to-talk mode; any other use (such as reading or writing text messages) would contravene the prohibition in regulation 110. The drivers will be permitted to use the devices whilst stationary and whilst in motion. The exemption applies to the emergency services that use Airwave Tetra and ESN – the police, fire and rescue, the ambulance service and HM Coastguard.

5.10 Looking to the future, government has already started investing some £9 billion to develop the next generation of communication for the emergency services – ESN will enable drivers to communicate through the traditional "press-to-talk" mode but will operate on devices which use commercial mobile phone signals. The amendments to regulation 110 will ensure that there is no ambiguity as to the extent to which the exclusion of two-way radios applies in respect of the ESN devices.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 41D(b) of the Road Traffic Act 1988, c. 52 (UK) makes it an offence for a person to contravene a prohibition of the C&U Regs 1986 "as to not driving or supervising the driving of a motor vehicle while using a hand-held mobile telephone or other hand-held interactive communication device, or not causing or permitting the driving of a motor vehicle by another person using such a telephone or other device". The prohibition is provided in regulation 110 of the C&U Regs1986 (inserted into the C&U Regs 1986 by The Road Vehicles (Construction and Use) (Amendment) (No. 4) Regulations 2003).

6.2 When regulation 110 was introduced in 2003, it included an exemption for people who find themselves in an emergency situation and must pick up the phone or device to call the emergency services. Two subsequent exemptions were added to regulation 110, one in 2018, to allow drivers to hold a device for the purposes of remotely parking a vehicle (The Road Vehicles (Construction and Use) (Amendment) Regulations 2018); and a second in 2022 to allow drivers to use a hand-held device to make a contactless payment (The Road Vehicles (Construction and Use) (Amendment) (No. 2) Regulations 2022).

6.3 Two-way radios, using certain frequencies identified in regulation 110, have always been specifically excluded from the definition of a device which could not lawfully be held and used while driving.

6.4 The 2022 amending regulations introduced a definition of a prohibited device as one which "…is capable of transmitting and receiving data, whether or not those capabilities are enabled.".

Why was this approach taken to change the law?

6.5 This approach is necessary to maintain the position that communication devices used by the emergency services are exempted from the general prohibition on the use of a hand-held mobile phone or equivalent device in connection with the driving of a motor vehicle. Emergency services drivers need to have clarity about what they are permitted to do and what is prohibited while they drive, often in risky or dangerous situations. The offence is set in law so the law itself must be amended to provide the necessary clarity for drivers.

7. Consultation

Summary of consultation outcome and methodology

7.1 Section 195 of the Road Traffic Act 1988 obliges the Secretary of State to consult with such representative organisations as he thinks fit. Given the limited impact of the change, which essentially allows emergency service drivers to continue to use two-way radios in press-to-talk mode but using more up to date devices, government opted for a narrow non-public consultation targeted at the principal organisations representing the police, fire and rescue, ambulance service and HM Coastguard. A consultation letter was sent out on 19 July 2023 with a five-week deadline.

7.2 22 responses were received. 21 of these were in favour of the proposed change. The organisations in favour stressed the importance of drivers being able to communicate instantaneously during operational activities yet were mindful of the need to minimise distraction.

7.3 The Independent Office for Police Conduct expressed views about the practical effects of the proposal which prompted DfT to undertake a more detailed examination of precisely how the devices work.

7.4 The Home Office team responsible for developing ESN gave DfT officials a demonstration of the Airwave Tetra and ESN (trial) devices to provide assurances about the potential for distraction. The demonstrations showed that there is a very low risk of emergency services drivers being distracted by the devices while performing their professional duties. In the case of both Airwave Tetra and ESN the emergency driver need do no more than press a single button on the device just as they do with the conventional two-way radio. Normally the driver will have the device attached to their uniform or body armour, in which case hand-held use will not be necessary, but this exemption is required to cover instances where a driver might need to hold the device in their hand and use it.

8. Applicable Guidance

8.1 The government will rely on the organisations representing the emergency services to disseminate information about the new exemption introduced by this instrument.

8.2 For those responsible for enforcement (police and courts), the government will rely on them to alter their guidance as necessary to reflect the changes to the law.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because there are no significant impacts as a result of the changes in this instrument.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the change affects only the emergency services.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because emergency services drivers are not being required to do anything new or different; the change simply allows them to continue to use press-to-talk communication while driving.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that the government regards road safety as a priority and keeps the law under regular review. This measure will be subject to regular review of the law.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").