EXPLANATORY MEMORANDUM TO THE

ROAD VEHICLES (CONSTRUCTION AND USE) (AMENDMENT) (No. 2) REGULATIONS 2005

2005 No. 2560

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

2. Description

These Regulations will amend SI 1986/1078 of the Road Vehicles (Construction and Use) Regulations 1986. Two further organisations will be permitted to fit sirens to their vehicles beyond the emergency services. Those bodies are the Ministry of Defence for use in emergencies when moving nuclear materials, or in responding to nuclear incidents, and HM Revenue and Customs during serious crime investigations.

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

None.

4. Legislative Background

SI 1986/1078 sets standards for the manufacture, construction, maintenance of all road vehicles. This includes brakes, steering, vision, instruments and equipment, protective systems and control of emissions. The new regulations will amend section 37 of SI 1986/1078, which currently permits vehicles of various emergency services to be fitted with "a bell, gong, siren or two-tone horn".

5. Extent

This instrument applies to Great Britain only.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1. Section 37 of SI 1986/1076 limits sirens to vehicles used by specific emergency and law enforcement agencies (fire fighting, ambulance, police, coastguard, blood transfusion and various rescue services).

7.2. The amending instrument will allow the specialist unit in the Ministry of Defence that is responsible for transporting nuclear materials to be included in this group. At present, this role is undertaken by the Defence Logistics Organisation's Nuclear Movements & Nuclear Accident Response Group. Generally vehicles moving nuclear materials are escorted by police and fire service vehicles. But in a nuclear accident response, special support vehicles might be proceeding to an incident without initial escort. These regulations would allow the MOD to retain use of sirens for vehicles transporting such cargo without further legislative changes, if internal responsibility for this task changes within that Ministry.

7.3. In addition, HM Revenue & Customs will for the first time be permitted to use sirens in the same circumstances as their police counterparts. But sirens would only be allowed during high risk incidents involving serious crime investigations. They would not but exempt from speed limits, red lights or other traffic laws. These areas are regulated by other legislation.

7.4. These proposals reflect the outcome of consultation from 13th January to 13th April 2003, on the wider issue of extending the use of flashing lights by vehicles. Deployment of sirens was a secondary, though significant issue of that exercise, as they are used simultaneously by the emergency services to gain access through traffic when responding urgently to incidents. Although sirens were not the main focus, the consultation re-affirmed the case of HM Revenue & Customs, whilst the MOD submitted a request for their use when moving nuclear materials. A copy of the final Regulatory Impact Assessment on flashing lights consultation is attached. Responses received were broadly supportive. These proposals did not attract media attention. This measure is legally (though not politically) significant, because extending siren use beyond the emergency services is rare. Applicants must fully justify their right for special access through traffic. They must prove that they would need sirens to perform essential duties during genuine emergencies. Their activities might involve tackling serious crime or urgent incidents that endanger life and property.

8. Impact

There are no impacts on the public sector (see attached RIA).

9. Contact

James Chan at the Department for Transport (tel: 020 7944 2087 or e-mail: james.chan@dft.gsi.gov.uk) can answer any queries regarding the instrument.

Final Regulatory Impact Assessment (RIA)

1 Title of proposal

The Road Vehicles Lighting (Amendment) Regulations 2005 No. 2559
The Road Vehicles (Construction and Use) (Amendment) (No.2) Regulations 2005 No. 2560

These cover the issues of whether to allow HM Revenue and Customs to use blue flashing lights and whether to allow them to use sirens, respectively.

Purpose and intended effect of the measure.

Objective
To increase safety and operational efficiency of Revenue and Customs officers.

Background

The former HM Customs and Excise (now HM Revenue and Customs following the making of the Commissioners for Revenue and Customs Act 2005) have requested to be allowed to fit and use Public Warning Equipment to their surveillance vehicles in Great Britain. This comprises flashing or rotating blue lights and sirens. They argue that they need to use these for Health and Safety reasons, both for the public and for Revenue and Customs officers. HM Revenue and Customs are the lead enforcement agency on matters such as drug trafficking. Although the Serious and Organised Crime Agency (SOCA) is expected to come into existence in Spring 2006, and will take on some of this work, nevertheless it is expected that Revenue and Customs will still retain some responsibilities for investigation of serious crimes.

Revenue and Customs argue that being allowed to use public warning equipment would bring them into line with surveillance vehicles used by the National Crime Squad. The public warning equipment would only be used in cases where serious or organised crime is being investigated, under circumstances such as making ground in heavy traffic when required to respond urgently to intelligence or in "knock/strike" situations where officers' vehicles need to change from being covert to overt in order to be clearly identified as Law Enforcement.

Non-lighting construction and use aspects of road-going vehicles are regulated by the Road Vehicles (Construction and Use) Regulations 1986 (as amended) (known as C&U). These would need to be amended to allow fitting and use of sirens while the Road Vehicle Lighting Regulations 1989 (RVLR) would need to be amended to allow fitting and use of blue lights.

In the current lighting regulations, two bodies which are under the control of the Secretary of State for Defence (the Naval Emergency Monitoring Organisation and the RAF Armament Support Unit) are permitted to use blue lights to prevent or respond to incidents involving nuclear weapons. Due to internal MOD reorganisation, these bodies are now both defunct and therefore the lighting regulations need to be amended to ensure that blue lights continue to be permitted on vehicles that are used to prevent or respond to emergencies that involve radioactive material. During the consultation, the MOD also made a request that these vehicles be permitted to use sirens to help speed progress through traffic to the site of an emergency.

Rationale for government intervention

There appears to be no alternative other than changing the regulations to achieve the desired objectives. No other measure is available to fulfil the twin aims of helping officers proceed quickly through traffic, and reducing the risk of harm to Revenue and Customs officers attempting an arrest, where criminals unsure if they are being attacked by other gangs may be violent.

Concerning the MOD usage of blue lights and sirens, again there is no alternative to amending the regulations.

3 Consultation

Following correspondence between Department for Transport and Home Office Ministers, and official level discussions which also involved ACPO, formal consultation was carried out in early 2003. The results of the formal consultation are summarised in a separate document available on the Department's website or by writing to the Departmental contact at the address given below.

The results of the consultation on the major issue at hand were clear. The majority of commenters were in favour of allowing Revenue and Customs to use blue lights during investigation or surveillance of serious or organised crime.

Concern was expressed about standards of training of drivers but Revenue and Customs have given assurances that drivers will be trained to the same standards as the Police emergency response drivers.

Also during the consultation, the Metropolitan Police and the London Ambulance Service requested that pedal cycles used by the Emergency services be permitted to have blue lights and sirens. Currently there is no explicit prohibition on fitting a siren to a pedal cycle, whilst blue lights on a pedal cycle are prohibited. It is thought that this is probably because regulators never envisaged that Emergency services would wish to use pedal cycles for urgent response duties, rather than a feeling that this usage was inappropriate. The Department has been advised that pedal cycles can sometimes respond quicker to emergencies than motor vehicles, particularly on congested roads in London and in pedestrianised areas. Thus Option 2 (see below) has now been amended to permit pedal cycles used by the bona fide Emergency services to use blue lights.

During the consultation, Mountain Rescue Council (MRC) requested to be explicitly added to the list of Emergency vehicles. They advised that although they and Cave Rescue teams have used blue flashing lights and sirens for many years under the belief that their vehicles fall under the definition of a "vehicle used for fire brigade, ambulance and police purposes", some police forces interpret the regulations differently. The MRC would like a separate entry for their vehicles as Emergency vehicles in the Road Vehicles Lighting Regulations.

The Department can understand the wish to remove all doubt over the status of MRC vehicles by having an explicit entry for them in the Lighting Regulations. Unfortunately, an explicit entry for MRC vehicles in the RVLR might actually have the effect of eliminating the ability of these vehicles to be exempt from other aspects of road traffic law. Such privileges as exemptions from speed limits and ability to treat red traffic lights as Give Way signs, are restricted to vehicles used for "Fire Brigade, Police and Ambulance purposes" by the pertinent Acts or Regulations. The presence of an explicit statement in RVLR that MRC is a particular category of Emergency

vehicle for the purposes of entitlement to blue lights, might be construed to mean that they are NOT in the category "Fire Brigade, Police or Ambulance purposes". Therefore, if read across to other laws this would imply that they are not entitled to the other privileges which are extended to Emergency vehicles. Therefore the Department is not proposing any amendments at this stage.

4 Options

Two options were identified. Following the public consultation, Option 2 was modified to allow pedal cycles used by the Emergency Services to use blue lights.

Option 1: Do nothing

Option 2: Allow Revenue and Customs to use blue lights and sirens when in pursuit of serious crime. This should improve the safety of Revenue and Customs officers and the public. Allow pedal cycles operated by the defined Emergency services to use blue lights.

Widening the number of possible users of blue lights might be seen to lead to proliferation and a loss of effectiveness of these lights. This is a valid concern but given that Revenue and Customs have undertaken to lay down strict internal guidelines for their use, including minimum driver training standards, and have agreed to keep records of every occasion when the blue lights are used, we feel that the risk is minimal.

5. Costs and Benefits

Sectors and Groups affected
HM Revenue and Customs personnel, other road users, other users of blue lights, manufacturers of blue lamps.

Analysis of Costs and Benefits.
There would be road safety benefits to both Revenue and Customs and to other road users from allowing Revenue and Customs to use blue lights and sirens. It will be more obvious to other road users that they are law enforcement officers. It should also allow Revenue and Customs to improve operational effectiveness.

Against this must be weighed the possibility of diluting the effectiveness of blue lights for other existing users, such as the Police. However the limitation of usage to Revenue and Customs investigation of serious/organised crime will in practice limit the instances where blue lights are used. They cannot be used during normal day-to-day revenue collection activities.

Revenue and Customs have agreed that their officers should undergo full training to Police standards. This will increase the internal administration costs for Revenue and Customs, but they are happy to bear those costs in return for the advantages that the use of public warning equipment is expected to bestow.

Concerning blue lights for pedal cycles operated by the Emergency Services, the main benefit is expected to be improved response times to medical and criminal emergencies, which should results in benefits to society of better medical care and reduced crime. The only possible cost could be a reduction in effectiveness of blue lights following proliferation. However the Emergency services are already aware of

the dangers of proliferation and accordingly restrict blue light usage to genuine emergencies.

Summary of Costs and Benefits.

Option 1 is the status quo. Option 2 offers benefits of road safety and operational effectiveness of Revenue and Customs and Emergency services. Any costs are unlikely, and are expected to be minimised if Revenue and Customs and Emergency services follow accepted good practice and provide adequate training to staff who are authorised to use public warning equipment.

6. Small firms impact test

As the proposed measure is permissive there will be no new or increased burden. None of the commenters on the consultation raised any issues for small businesses, despite comments being specifically requested on this subject.

7 Competition Assessment

No competition issues arise as Revenue and Customs are not engaged in competition with other organisations. The only effect on the market of the changes would be an increase in demand for blue lights and sirens. It is not expected that this will change the structure of the market in any way.

8. Enforcement, Sanctions and Monitoring.

The correct usage of lighting is enforced by the police. Because this measure is a relaxation, it is unlikely to have any major implications for enforcement.

It is expected that HM Revenue & Customs, and the Emergency services intending to use blue lights on pedal cycles, either already have or will put in place, internal procedures to limit the usage of public warning equipment except where absolutely necessary. It would be embarrassing for such bodies to find themselves in breach of the law.

Revenue and Customs have committed to internally monitor their usage of blue lights/sirens and will be requested to report back to the Department by September 2006.

9. Implementation and Delivery plan

As the intended measures are deregulatory, they can be introduced without delay. A detailed implementation plan is not seen as necessary. However, it is imperative that interested parties are informed of the changes to regulations. In particular, the Department plans to notify ACPO (for cascade to all police forces), the Home Office and HM Revenue & Customs of the changes.

10. Post implementation Review

The Revenue and Customs usage of flashing blue lights will be reviewed by September 2006, to analyse whether their usage of blue lights and sirens has been beneficial.

11. Summary and recommendation

Option 2 would improve road safety by allowing HM Revenue & Customs officers to warn the public while pursuing potentially dangerous criminals and to identify themselves as law enforcement officers. Safety would be preserved by ensuring that blue light drivers are trained to the same level as their Police Counterparts. This will involve some increased cost. This option would also allow pedal cycles used by the Emergency services to use blue flashing lights, which will improve operational efficiency.

Summary table of costs and benefits

Option	Total benefit per annum: economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
Option 1. Do nothing	None	None
Option 2. Permit public warning equipment on HM R&C vehicles used against serious crime.	Improved road safety and operational efficiency of HM R&C and Emergency services using pedal cycles.	Some internal administrative (training) costs for HM R&C.

Recommendation - The Department recommends **Option 2** as the best option for road safety and society. It will allow road safety benefits and improved operational efficiency of Revenue and Customs and Emergency services with minimal costs.

12. Declaration and publication

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

Signed S J Ladyman

Date 13th September 2005

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