

**EXPLANATORY MEMORANDUM TO THE
PASSENGER AND GOODS VEHICLES (RECORDING EQUIPMENT)
REGULATIONS 2005**

2005 No. 1904

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

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

2. **Description**

- 2.1 The Regulations amend the Transport Act 1968 to remedy shortcomings in the existing framework for the enforcement of the drivers' hours rules and to adapt that framework for the new digital tachographs.

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

- 3.1 Equivalent provisions were contained in Schedule 5 to the Road Safety Bill which was introduced to the previous Parliament, in the House of Commons, last November. That Bill did not receive Royal Assent prior to the dissolution of Parliament. As these provisions need to be in place by August, when digital tachographs are expected to begin to enter service, it was decided to instead use the regulation-making powers in section 2(2) of the European Communities Act 1972.

- 3.2 The provisions in the new Regulations are not exactly the same as those in Schedule 5 because some provisions in Schedule 5 related solely to the domestic drivers' hours rules falling outside the scope of section 2(2) and have, therefore, been omitted from these Regulations. In addition, some minor changes have been made to improve the drafting and a consequential amendment of section 97B of the Transport Act 1968 has been added.

- 3.3 These Regulations are being laid before Parliament under the negative resolution procedure because, although they make amendments to primary legislation, they simply develop what is already in that legislation to meet modern requirements. Furthermore, these provisions proved uncontroversial when they were before Parliament as part of the former Road Safety Bill.

4. **Legislative Background**

- 4.1 Most drivers of large commercial vehicles are subject to the EU drivers' hours rules set out in Commission Regulation (EEC) 3820/85 ('the EU

Drivers' Hours rules'). These rules limit continuous driving time and require drivers to take minimum breaks and rest periods. The main goal of the EU Drivers' Hours rules is to reduce the risk of drivers becoming involved in fatigue-related accidents. Separate domestic drivers' hours rules apply to those drivers who are specifically exempted from the EU Drivers' Hours rules.

- 4.2 In order to enforce drivers' hours rules (whether EU or domestic), it is important to have a record of drivers' activities. Vehicles subject to the EU drivers' hours rules have to be fitted with a tachograph in accordance with Commission Regulation (EEC) 3821/85 (the EU tachograph rules). The tachograph is a device which automatically records driving. Drivers who are subject to the domestic drivers' hours rules are not generally required to use tachographs. However, tachographs must be used in national postal vehicles with a maximum permissible weight of 3.5 tonnes or more, as Regulation (EEC) 3821/85 was applied to them by the Community Drivers' Hours and Recording Equipment (Exemptions and Supplementary Provisions) Regulations 1986 (S.I. 1986/1456).
- 4.3 The Regulations make changes to Part 6 of the Transport Act 1968 and Schedule 1 to the Road Traffic (Foreign Vehicles) Act 1972 which are necessary to reflect the introduction of a new kind of tachograph. Existing, analogue, tachographs, which conform to Annex I to Commission Regulation (EEC) 3821/85, make records on paper disks. In 1998, the EU adopted Commission Regulation (EEC) Regulation 2135/98, which amended 3821/85 and paved the way for the introduction of digital tachographs (tachographs conforming to a new Annex IB). These will store records of driver activities in digital memory rather than on paper. They will be used in conjunction with smart cards known as driver cards. The digital tachograph will also include a printer capable of making printouts of the information recorded by the digital tachograph.
- 4.4 EU Regulation 2135/98, required all relevant vehicles first put into use after 5th August 2004 to be equipped with a digital tachograph. However, as digital tachographs were not available in any Member State by that date, it would have been unreasonable to enforce that requirement and the Commission declared an informal moratorium. The EU Institutions are currently considering an amendment to EU legislation which would formally postpone the date after which only digital tachographs are to be installed in relevant new vehicles. As that new date is still subject to negotiation, these Regulations simply amend the Act to permit either type of tachograph to be used. Unlike the former Schedule 5, they do not contain a power for the Secretary of State to set the date, after which only digital tachographs may be fitted to relevant new vehicles, by order. Consequently, when a new date is agreed in Brussels, an amendment will need to be made by further Regulations to insert the necessary requirement.
- 4.5 More generally, there is a need to update the existing provisions of the Transport Act 1968 to reflect the forthcoming introduction of digital

tachographs. In addition, the Regulations would rectify certain deficiencies and ambiguities in the existing legal framework for enforcing the drivers' hours rules affecting both forms of tachograph.

- 4.6 The key matters addressed in the new Regulations are set out below:
- A. The Regulations clarify and improve enforcers' existing powers to inspect tachograph records and other evidence related to compliance with the drivers' hours rules. They also make it clear that enforcers may remove, retain and copy tachograph records and other evidence.
 - B. The Regulations would introduce a new limit on the length of time for which records can be held if not needed as evidence (6 months). The power to ask for records to be sent to the office of the Traffic Commissioner (which dates back to a time when enforcers operated from the premises of the Traffic Commissioner) would be updated to allow enforcers to ask for records to be sent to any specified address.
 - C. The Regulations create a new power to send a vehicle to a specified address where it can be properly inspected, if an enforcer has reason to believe that the vehicle's tachograph has been interfered with or that there is an interference device in or on the vehicle.
 - D. The Regulations require drivers to sign a print-out from their digital tachograph to confirm the accuracy of the information shown when requested to do so by an enforcement officer (this printout might relate to information either on the tachograph itself or on the driver card). The enforcement officer will be able to retain this print-out as evidence.
 - E. The existing level 3 penalty for failing to provide records, or obstructing an officer, will be increased to level 5.
 - F. The Regulations will introduce a new offence of permitting falsification of records (which will attract a maximum level 5 fine).
 - G. The Regulations will make it clear that failing to record relevant activities and destroying or suppressing relevant records are considered a form of falsification.
 - H. The Regulations will make it an offence to produce, supply or install devices designed to interfere with the functioning of a tachograph or with data stored by a tachograph or driver's card.

- I. The Regulations would also make various changes that are necessary to adapt the existing enforcement framework to the introduction of digital tachographs (for example, powers to inspect record sheets will be extended to driver cards, printouts and data stored in digital tachographs and section 97 of the Transport Act will be amended to apply those provisions to vehicles that are (or should be) equipped with digital tachographs in the same way as vehicles that are (or should be) equipped with analogue tachographs).

4.7 These Regulations are linked to the Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card Fees) Regulations 2005 (SI 2005 no.1140) which provide for the issue of digital tachograph cards. These Regulations were laid before Parliament on 11 May.

A transposition note setting out how the provisions of the Council Regulation are reflected in the Regulations is attached at Annex A

5. Extent

5.1 This instrument applies to Great Britain. Similar provisions for Northern Ireland will follow shortly after these Regulations.

6. European Convention on Human Rights

6.1 Dr Stephen Ladyman, Minister of State for Transport, has made the following statement regarding Human Rights:

In my view the provisions of the Community Drivers' Hours and Recording Equipment Regulations 2005 are compatible with the Convention rights.

7. Policy background

7.1 Both the EU drivers' hours rules and the EU tachograph rules require the UK to make adequate provision for the enforcement of their requirements, including 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 the drivers hours rules should help to prevent such road accidents.

7.3 The overall aim of these Regulations is to help to maintain an effective framework for enforcing the existing drivers' hours rules, particularly in the light of the forthcoming introduction of digital tachographs. The government consulted on its proposals to amend section 99 of the Transport Act 1968 in

July 2004 as part of a wider consultation exercise entitled 'Consultation on a Graduated Fixed Penalty and Deposit Scheme and Enforcement of Drivers' Hours Rules. The government intends to bring forward further legislation relating to the enforcement of the drivers' hours provisions in due course, on which we will carry out a separate consultation exercise.

7.4 The government's legislative proposals have not been the subject of significant public interest (and attracted very little attention when they formed part of the Road Safety Bill introduced in the last Parliament). However, the responses to the consultation paper of July 2004 suggest that the proposals have the general support of the industry (see the Regulatory Impact Assessment for further information - copy at B).

7.5 Although no new date has yet been agreed for the mandatory fitting and use of digital tachographs in new vehicles (instead of analogue tachographs), digital tachograph-equipped vehicles are expected to begin enter service from August this year. The government therefore considers it necessary to bring these amendments into force by August rather than to wait for the passage of the new Road safety Bill through Parliament.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum at Annex B.

9. Contact

9.1 Mark Bosly at the Department for Transport, Zone 2/25, Great Minister House, 76 Marsham Street, London, Tel: 020 7944 8391 or e-mail: mark.bosly@dft.gis.gov.uk can answer any queries regarding the instrument.

Transposition Note

Council Regulation (EEC) No.3820/85 on the harmonisation of certain social legislation relating to road transport and Council Regulation (EEC) No.3821/85 (as amended by Council Regulation (EC) No.2135/98) on recording equipment in road transport

1. The Passenger and Goods Vehicles (Recording Equipment) Regulations 2005 amend Part 6 of the Transport Act 1968 to provide for better enforcement of the EU drivers' hours rules, which are contained in Regulation (EEC) No.3820/85, and to cater for the introduction of digital tachographs following the amendment of Regulation (EEC) No.3821/85 by Regulation (EC) No.2135/98. This note sets out those provisions of the Council Regulation which are reflected in the Regulations.

2. Article 17 of Regulation 3820/85 and Article 19 of Regulation 3821/85 require Member States to provide for enforcement of the requirements of those two Regulations, which do not contain enforcement provisions. These new regulations are made by the Secretary of State in discharge of those requirements.

REGULATORY IMPACT ASSESSMENT
THE PASSENGER AND GOODS VEHICLES (RECORDING
EQUIPMENT) REGULATIONS 2005

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1. Title of proposal

The Passenger and Goods Vehicles (Recording Equipment) Regulations 2005

2. Purpose and intended effect

2.1 Objective

2.1.1 To provide for the effective enforcement of existing drivers' hours rules (a list of related EU and domestic legislation is in Annex **A**). Specifically:

- to adjust existing national legislation in order better to achieve its intended effect, and,
- to ensure procedures are in place so that the drivers' hours rules can continue to be enforced following the imminent introduction of digital tachographs (see paragraph 2.2.5 below) .

2.1.2 The new Regulations do not introduce any new drivers hours rules and the effect on law-abiding drivers and operators will be negligible. Indeed they should benefit competitively from better enforcement against law-breakers.

2.1.3 The new Regulations will cover England, Scotland and Wales. Similar provisions for Northern Ireland will follow shortly after these Regulations.

2.2 Background

2.2.1. As stated above, the overall objective of these Regulations is to provide for the effective enforcement of existing drivers' hours rules. These rules set maximum limits on driving time and minimum requirements for breaks and rest periods for commercial vehicle drivers. There are two different sets of drivers' hours rules. The EU drivers' hours rules, which are set out in EU Regulation 3820/85, apply to most HGV drivers and about half of the bus and coach drivers operating in this country. Separate domestic drivers' hours rules apply to those drivers specifically exempted from the EU drivers' hours rules.

2.2.2. Generally speaking, drivers who are subject to the EU drivers' hours rules are required to use a tachograph. Tachographs are used to record drivers' activities and these records are used to enforce the EU drivers' hours rules. Drivers who are subject to the domestic drivers' hours rules are not required to use tachographs, with one exception. Tachographs must be used in conjunction with national postal vehicles with a maximum permissible weight of 3.5 tonnes or more, although these vehicles are not covered by the EU rules.

2.2.3. Section 99 of the Transport Act 1968 gives enforcement officers the power to inspect tachograph records and other relevant documents to establish whether the drivers' hours rules have been observed. However, experience has shown that there are some shortcomings in the existing

legislative framework which make it difficult to fulfil the intention of the original legislation (see 2.3.3). Therefore, the Government wishes to amend Section 99 to give enforcers additional powers, remove ambiguities and to increase the maximum penalty for failing to produce records or for obstructing an officer.

2.2.4 In addition, EC Regulation 2135/98 provided for the introduction of a new kind of tachograph, commonly known as the digital tachograph. Digital tachographs will record information needed to check compliance with the drivers' hours rules in digital memory, rather than (as now) on a paper disc. Digital tachographs will be used in conjunction with smart cards known as tachograph cards which will store certain information in a digital memory chip on the card. The digital tachograph will also include a printer capable of making printouts of the information recorded by the digital tachograph.

2.2.5 Under EU Regulation 2135/98, all relevant vehicles first put into use after 5th August 2004 should have been equipped with a digital tachograph. However, as digital tachographs were not available by that date it would have been unreasonable to enforce that requirement. The Commission therefore declared a moratorium. At the time of writing, discussions with industry suggest that:

- August 2005 is probably the earliest date from which digital tachograph equipped vehicles might begin to enter service, but,
- it will not be possible for all relevant new vehicles to be digital tachograph-equipped from that date.

2.2.6 Consequently, the EU Institutions are currently considering an amendment to EU law which would formally postpone the deadline for installation of digital tachographs in relevant vehicles. However, that new deadline is still subject to negotiation. The Regulations covered by this RIA will amend the existing legislation to allow the use of either type of tachograph, for the time being. It should be noted, however, that other Member States may take a different approach. For further information on this issue, please see the statement made by former Minister for Transport David Jamieson on 23 March (a copy is attached at Annex **B**).

2.2.7 Although the deadline for the mandatory fitting of digital tachographs may be postponed, industry will be free to start equipping relevant vehicles with digital tachographs and using those vehicles before that date on a voluntary basis. As stated above, the Government expects the first digital tachographs to begin to come into use this summer. The existing provisions relating to tachographs and the enforcement of the drivers' hours rules were drafted with paper-based tachographs in mind. Therefore, they need to be updated to reflect the expected and imminent introduction of digital tachographs and smart tachograph cards.

2.2.8 The Road Safety Bill introduced to Parliament in 2004 included provisions that would have rectified the identified shortcomings in section 99 of the Transport Act 1968 and made changes to that Act to reflect the

introduction of digital tachographs. That Bill failed to obtain Royal Assent prior to the dissolution of Parliament for the General Election. Given the now urgent need to adapt the legislation to digital tachographs, the Government has decided to use its powers under the European Communities Act 1972 to bring forward the necessary legal changes in the form of Statutory Regulations instead, insofar as our Regulation making powers under the 1972 Act permit us to do so.

2.2.9 The Government will also need to bring forward a further set of Regulations under the European Communities Act 1972 (which will primarily deal with matters related to tachograph cards) and will consult on those Regulations in due course. In that second set of regulations, we also intend to make changes to the Transport Act 1968 to bring the provisions relating to the enforcement of the domestic drivers' hours rules in line with those for persons subject to the EU rules (as noted above, the domestic drivers' hours rules apply to those drivers who are exempt from the EU drivers' hours rules). This RIA, however, relates solely to the Passenger and Goods Vehicles (Recording Equipment) Regulations which deal with matters previously dealt with in Schedule 5 to the Road Safety Bill (though note that certain minor drafting improvements have been made and that the Regulations also make a consequential amendment to section 97B of the Transport Act 1968 to ensure that entries made on printouts from digital tachographs will be admissible in evidence when a tachograph is no longer functioning properly).

2.2.10 Overall policy responsibility for the enforcement of the drivers' hours rules in England, Scotland and Wales rests with the Department for Transport (DfT). Actual enforcement is primarily the responsibility of the Vehicle and Operator Services Agency (VOSA), an agency of DfT, although the police also play an important role. Enforcement activity takes the form of roadside checks and compliance audits at operators' premises. Both these activities are targeted on operators considered to pose the greatest risk to road safety.

2.3 Rationale for government intervention

2.3.1 Under EU law, the UK Government is required to make adequate provision for the enforcement of EEC Regulation 3820/85 ('the EU drivers' hours rules) and EEC Regulation 3821/85 ('the tachograph rules'). In particular, the Government is required to impose penalties in cases where those rules are breached. Failure to do so would leave the UK Government open to infraction proceedings.

2.3.2 Fatigue leads to a higher incidence of traffic accidents due to driver sleepiness. The consequences if a large vehicle is involved in an accident are potentially far more serious than for a small vehicle. Research has found that falling asleep at the wheel accounts for up to 20% of crashes on motorways or similar roads, and as many as one in ten of crashes on the whole road network. Drivers who fall asleep at the wheel are 50% more likely to die or suffer serious injury than other casualties. For more information on this subject see our website at www.thinkroadsafety.gov.uk/

advice/drivertiredness01.htm and Research Reports 21 and 52 available at www.dft.gov.uk/stellent/groups/dft_rdsafety/documents/divisionhomepage/030261.hcsp.

2.3.3 Over the years, various difficulties with the existing provisions relating to the enforcement of the drivers' hours rules have come to light. In particular, the existing penalty for failing to provide records, or obstructing an officer, is lower than the level 4 penalty (see Annex C) for breaking the drivers hours rules. Therefore, offenders will generally face a lower penalty if they withhold records, or obstruct an officer, than if they co-operate and are found to be in breach of the rules. Existing law also contains various ambiguities that make it more difficult to enforce the rules effectively. For example, following a court case, the House of Lords ruled that the current law allows enforcers to remove records but the ruling did not fully clarify the power of enforcers to take away records. Finally, the existing powers were drafted with the use of paper-based tachographs in mind and need to be updated to apply them to digital tachographs.

2.3.4 In 2003, statistical checks of heavy goods vehicles revealed that just over 8% of drivers in the sample had committed offences under the EU drivers' hours rules and just under 8% were involved in tachograph related offences. These percentages could well increase if the legislation was not amended to ensure that the Government could continue to enforce the rules effectively following the introduction of digital tachographs. More generally, if the UK cannot enforce the drivers' hours rules effectively, it will lead to an increased risk of drivers of large commercial vehicles breaking the rules and therefore being involved in fatigue-related accidents. However, it is not possible to quantify the effect on the accident rate of either the identified shortcomings or the proposed solutions. The primary motivation for the measures proposed is to ensure the Government has a coherent and credible enforcement framework to deliver its obligations under EU law. There is no way to achieve this goal without making suitable changes to the existing legislation.

2.3.5 The new Regulations will affect all those persons who are subject to the EU drivers' hours rules and/or the EU tachograph rules (including employers of drivers who are subject to those rules and other persons who have responsibility for ensuring that the rules are not broken).

3. Consultation

3.1 Within government

3.1.1 These proposals were cleared by the Domestic Affairs Committee prior to their inclusion in the Road Safety Bill (see paragraph 2.2.8 above).

3.2 Public consultation

3.2.1 A UK wide consultation paper was issued in July 2004. The Government received twenty responses to its proposals for amending section 99.

3.2.2 Four respondents expressed concerns relating to the power to direct vehicles in order to check for devices used to interfere with tachographs. Of these, two asked for a right to compensation to apply if a vehicle was diverted for a detailed check but nothing was found to be wrong (we have agreed to introduce such a right where vehicles are diverted by more than 5 miles for a check and no breach of the tachograph rules is found). Four respondents supported a level 4 fine (see Annex C for information on fine levels) for failing to produce records or obstructing an officer rather than a level 5 fine (see Annex C). Inspection of tachograph record sheets can reveal that a number of offences can be attributed to the operator of the vehicle. Whereas, non-production of record sheets will very often only result in one offence. The result is that, for non-production of records, an offender is currently given a lesser penalty (level 3) than if he produced records which showed drivers hours offences and he is also punished for fewer offences. The Government believes that a maximum level 5 fine is necessary to provide a real incentive to comply with the law.

3.2.3 The Confederation of Passenger Transport (CPT) and the Freight Trade Association (FTA) asked for enforcers to be required to return records after three months, rather than six, if they are not required as evidence. The Government would not favour this approach. Enforcement agencies are required on occasions to carry out large scale investigations - notably after serious road traffic accidents. In addition, where intelligence information has been supplied that a particular operator, and their drivers, have conspired together to defeat the driver's hours and tachograph rules, it is necessary to inspect large numbers of tachograph record sheets to prove the case. Our preferred approach is to retain a six month limit in Regulation supported by an administrative Service Level Agreement between our Vehicle and Operator Services Agency and the Trade Associations.

4. Options

4.1 This RIA considers two different options and the arguments for and against these options. Option 2 involves a number of individual provisions, most of which are largely independent of one another. In theory, it would be possible to take forward certain individual aspects of option 2 but not others. However, the Government considers that all the individual elements of the draft Regulations are necessary to produce a coherent and credible enforcement framework that will fulfil the Government's obligations under EU law.

4.2 Option 1: Do nothing (i.e. leave the existing legislation unchanged)

4.2.1. Risks of Option 1:

Risk	Probability	Consequences	Solution
Would leave the UK open to infraction proceedings	Certain	The UK could face extremely heavy fines	Option 2.
Would leave us with insufficient power to properly enforce the EU drivers' hours rules	Certain	Fatigue leads to a higher incidence of traffic accidents	Option 2.

Compliance and enforcement of Option 1:

4.2.2. N/A - Option 1 would not require compliance or enforcement

Unintended consequences of Option 1:

4.2.3. None have been identified beyond the serious risks recorded in paragraph 4.2.1

Plans for implementing Option 1

4.2.4. N/A - Option 1 is not practical

4.3 Option 2: Amend existing legislation to reflect the introduction of digital tachographs and to rectify existing shortcomings in the law.

4.3.1 The various changes required to existing legislation can be summarised as follows:

- **Signed Printouts** - Requiring drivers to sign a print-out from their digital tachograph to confirm the accuracy of the information shown would give drivers one last opportunity to correct any mistakes or oversights. It would also make it easier for enforcers to prosecute successfully drivers who knowingly and deliberately falsify records.
- **Power to Direct to Inspection Site** - This would help enforcers to detect persons who interfere with the functioning of their tachograph in order to conceal drivers' hours offences. This behaviour is associated with persons who wilfully disregard the drivers' hours rules and - by failing to take adequate rest - endanger other road users. They also gain an unfair competitive advantage over their honest rivals. This power would be subject to compensation arrangements if no offence was found, see below.

- **Increased maximum fine** - The existing penalty for failing to provide records, or obstructing an officer, is lower than the level 4 penalty (see Annex C) for breaking the drivers hours rules. Therefore, offenders will generally face a lower penalty if they withhold records, or obstruct an officer, than if they co-operate and are found to be in breach of the rules. A level 5 fine (see Annex C) would provide a real incentive to comply with the law.
- **Offences relating to falsification of records** - The Government intends to close some existing loopholes with regard to falsification of records. In particular, the Regulations would introduce a new offence of permitting falsification of records. This would help deliver the intention of existing national law by providing a more effective way to deal with operators if they encourage, persuade, or perhaps even force, drivers to falsify records to conceal drivers' hours offences. It is difficult to prove that an operator has committed the existing (more serious) offence of causing false records to be made, which can lead to a prison sentence. The offence of permitting falsification (which would attract a financial penalty only) would cover those operators who permit the falsification of records, but where there is no evidence that they were the actual cause of the falsification. It would also be an offence to produce, supply or install devices designed to interfere with the functioning of a tachograph or with data stored or previously stored by a tachograph or to provide information that would assist in producing such a device.
- **Other minor changes** - The Regulations would make a number of detailed changes to the 1968 Act in light of the provisions of EU Regulation 2135/98 (which provided for the introduction of digital tachographs). They would also clarify enforcers' powers to take records and other evidence for the purposes of inspection and introduce a new limit on the length of time for which records can be held if not needed as evidence (6 months). The power to ask for records to be sent to the office of the Traffic Commissioner (which dates back to a time when enforcers operated from the premises of the traffic commissioner) will be updated to allow enforcers to ask records to be sent to any specified address.

4.3.2. We consider all these provisions necessary to produce a coherent and credible enforcement framework that will fulfil the Government's obligations under EU law.

4.3.3. *Risks of Option 2:*

Risk	Probability	Consequences	Solution
Regulations fail to deal with all potential loopholes.	Low	Any loopholes would reduce the Government's ability to effectively enforce the drivers hours rules.	The Government consulted enforcers with a view to identifying potential loopholes. If practical experience demonstrates any

			shortcomings in the new Regulations, they can be amended or supplemented by making further Regulations.
Regulations go further than is absolutely necessary or desirable in certain respects	Low	Could have negative impact on industry	The Government consulted industry on its proposals. If practical experience demonstrates any shortcomings in the new Regulations, they can be amended or supplemented by making further Regulations.
Failure by enforcers to make full and effective use of their powers	Low	Inadequate enforcement of the rules would leave the Government open to the risk of infraction proceedings and increase the risk of fatigue related accidents.	Levels of enforcement are agreed in a formal agreement between DfT and the Vehicle & Operator Services Agency, and minimum levels of checks are a key target for that Agency.
Excessive use of powers by enforcers	Low	Could have negative impact on industry	Guidelines for the use of these powers will be incorporated within a revised Service Level Agreement between VOSA and the Trade. VOSA's Operating Instructions to Examiners are freely available to all. The police authorities advise that police enforcement will remain proportionate

			transparent and fair.
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Compliance and enforcement of option 2

4.3.4. The Regulations relate directly to ensuring compliance with, and enforcement of, the existing drivers' hours and tachograph rules. It is not therefore meaningful to talk about compliance with, and enforcement of, these Regulations themselves.

4.3.5 We can gain an indication of the overall levels of compliance with the drivers' hours and tachograph rules by examining the results of statistical fleet compliance surveys (these are already carried out every two years). The Government will examine the results of these to see whether overall levels of compliance appear to be increasing, decreasing, or remaining constant following the introduction of these Regulations.

Unintended consequences of option 2

4.3.6. None have been identified.

Plans for implementing option 2

4.3.7. The Department for Transport has developed the Regulations in partnership with DVLA and VOSA and in the wider context of enforcing the drivers' hours rules and preparing for the introduction of digital tachographs. At the time of writing (July 2005), discussions with industry suggest that August 2005 is probably the earliest date from which digital tachographs might begin to enter into service. However, it will probably be some time before all relevant new vehicles can be equipped with digital tachographs (see Annex B for further information).

4.3.8 DVLA is responsible for issuing cards and VOSA has primary responsibility for enforcing the drivers hours rules (though the police also play an important role). The Regulations do not require implementation in their own right as they involve enforcement powers that have been requested by enforcers and adjustments to penalties for breaking the rules to remove identified weaknesses and extend them to digital tachographs.

5. Costs and benefits

5.1 Sectors and groups affected

5.1.1. The Passenger and Goods Vehicles (Recording Equipment) Regulations would primarily affect those parts of the road freight and inter-urban passenger transport sectors which are subject to the EU drivers' hours rules (EEC Regulation 3820/85). It would also affect persons who drive large postal vehicles which are required to use tachographs by virtue of Regulation 5 of SI 1986/1456. The Government estimates that more than **500,000** full, or part-time drivers are subject to the EU drivers' hours rules (though estimating the number of drivers covered by the EU rules is not straight forward, see the RIA

for the the Road Transport (Working Time) Regulations at www.dft.gov.uk/stellent/groups/dft_freight/documents/page/dft_freight_037111.pdf for more details - a copy of that RIA was also provided to the libraries of the Houses of Parliament). The changes would also affect those who have responsibility for ensuring that the EU Rules are not broken - essentially the employers of such drivers, the Vehicle and Operator Services Agency (VOSA) and the police.

5.1.2 Many different types of organisations and individuals are involved in road freight and passenger transport including voluntary organisations, charities, the public sector (e.g. local authorities) and people from different backgrounds, including people from different racial groups and ethnic minorities. The Government does not consider that the legislation should have a disproportionate impact on any particular type of organisation or group of individuals and that it will not have any impact on racial equality.

5.1.3 The Regulations should also affect the general public, by virtue of their impact on road safety.

5.2 Benefits

General

5.2.1. For each of the legislative changes set out in paragraph 4.3.1 above, the primary benefit is its contribution to an enforcement framework that is effective, proportionate and dissuasive.

5.2.2 In 2003, statistical checks of heavy goods vehicles revealed that just over 8% of drivers in the sample had committed offences under the EU drivers' hours rules and just under 8% were involved in tachograph related offences. Levels of non-compliance can be expected to increase if the legislation is not amended to reflect the introduction of digital tachographs, as enforcement powers would be weakened. On the other hand, the proposed changes to existing legislation, should result in a decrease in drivers' hours offences, partly as a result of improvements to the enforcement framework and partly because the introduction of digital tachographs will enable checks to be carried out more quickly in the long term (in the short term enforcement will be less efficient as a result of the necessary 'learning phase', complexities arising from a significant number of drivers mixing driving between digital and analogue equipped vehicles, and the need for amendments to the underlying EU Regulation, which are still subject to negotiation by the EU Institutions)

5.2.3 Law abiding companies suffer unfair competition from operators that disregard drivers' hours rules. The Regulations will address areas of the enforcement framework that provide opportunities to break the rules.

5.2.4 The Government has no direct evidence to quantify the likely effectiveness of the new Regulations (and would be unable to gain such evidence without trialling "with" and "without" arrangements in parallel). But the Regulations were developed in close partnership with enforcement

agencies who are well acquainted with the behaviour of commercial operators.

Economic benefits

5.2.5 Law-abiding companies will gain economic benefits from an effective enforcement framework; operators that disregard the drivers' hours rules gain an unfair competitive advantage.

5.2.6 Preventing road accidents also has wider economic benefits. Road accidents can result in economic costs such as loss of output and loss of earnings for the individuals involved. They also cause congestion. An effective enforcement framework should help to reduce such losses.

Environmental Benefits

5.2.7 N/A

Social Benefits

5.2.8 An effective regime for enforcing the drivers hours rules should help to prevent road accidents, which has obvious social benefits. In particular, avoidance of fatalities spares families and friends the loss of a loved one and all the negative social impacts that attend such a loss. Any accident can also be a cause of stress to those involved, and those with whom they share social ties. Where an accident involves a person on whom others are dependent, there can also be additional social impacts if the person concerned is no longer able to provide the same quality of care, or any care, for those dependent on them (whether on a temporary or permanent basis). Ensuring that drivers have minimum break and rest periods also has social benefits for drivers themselves. Any driver who breaks the drivers hours rules will be working excessive hours which leads to stress and a poor balance between work and home life.

5.3 Costs

Economic Costs

5.3.1 These can be broken down as follows:

Costs to business

5.3.2 There should be no significant additional costs for law-abiding operators and drivers. In theory there is a possibility that a lorry may be delayed while a detailed inspection is made under the new Power to Direct to an Inspection Site in cases where there is reason to believe that the functioning of a tachograph has been subject to interference. But, in practice, enforcement agencies will pursue this course of action only where there is reason to believe that recording equipment has been interfered with or that an interference device is in or on the vehicle (eg a lorry was seen travelling but

the tachograph record showed it was stationary). Moreover, operators will be entitled to claim compensation if their vehicle is diverted by more than 5 miles and no breach of the tachograph rules is discovered. The amount of compensation payable would be determined by an arbitrator.

5.3.3. There may also be some costs associated with any request for a driver card (the digital equivalent of a record sheet) to be sent to a specified address. Unlike record sheets, drivers will not normally wish to be parted from their driver card and may well choose to take the card to the specified address in person rather than send it by post. There would be some additional costs for a driver if he chose to take a card to a specified address in person. However, enforcers will normally inspect a driver card at the roadside or they will check information downloaded from a driver card and made available to them at the specified address. Only in isolated cases would they require the actual driver card to be produced at a specified address (for example, if a driver did not have their card with them at the time of a roadside check and there was good reason to believe that the card had been the subject of some form of falsification). Moreover, they would specify an address that was reasonably convenient (e.g. the nearest VOSA office or police office).

5.3.4 . There are also general costs associated with any inspection (e.g. staff time), but these are costs which are already incurred under the existing system.

Costs to enforcement agencies

5.3.5 The Regulations should not result in increased costs for the enforcement agencies. Their resources are finite and the legislation should allow them to use the funds that they have more effectively by improving the deterrent effect of the enforcement regime.

Costs to the Court system

5.3.6 Our assessment is that the Regulations should not lead to an increase in Court activity. The capacity of enforcement agencies to pursue prosecution is limited by their finite resources. Moreover, the offence of permitting tachograph records to be falsified could reduce court activity as it would enable enforcement agencies to pursue one company rather than several drivers.

Environmental and Social costs

5.3.7 None

Summary of Costs and Benefits

5.3.8 In summary the Government's assessment is that:

- Overall, the additional cost of the Regulations should be minimal for law-abiding operators and drivers.
- The benefits, while unquantifiable, should be positive in terms of road safety (as the Regulations will help facilitate efficient enforcement of the drivers' hours rules). Moreover, law-abiding companies should benefit from a reduction in unfair competition from those who do break the rules.

6. Small Firms Impact Test

6.1. As noted above, a consultation paper was issued in July 2004. There were no responses to the consultation paper from any companies specifically identifying themselves as small firms. However, the public consultation suggested general industry support (including the main Trade Associations whose membership includes small firms). In response to requests from industry, the Government has agreed to include a right to compensation where vehicles are diverted by more than 5 miles for a check and no breach of the tachograph rules is found. For further information on consultation paper responses, see the main section on consultation (section 3.2 above). We consulted the DTI's Small Business Service and they concur with our assessment that the new Regulations should not have a significant or disproportionate adverse affect on law-abiding small businesses.

7. Competition assessment

7.1. The Road haulage industry is the principal market that will be affected by the regulations. A large number of firms compete to offer a road haulage services. In addition many firms operate their own in-house road distribution. In total 103,000 firms are licensed to operate road goods vehicles and most of these will be covered by the regulations.

7.2 The Road haulage industry is an open and very competitive market. While a few firms operate a large number of vehicles and handle a proportionately greater share of demand their market power is effectively constrained by competition. The 11 largest road haulage firms, those with more than 500 vehicles, collectively own 7400 lorries or only 2% of the total HGV fleet. In contrast 75,000 firms with goods vehicles operators licences operate two or fewer vehicles.

7.3 The regulation is not expected to have a significant impact on the costs of law abiding businesses in general or have any disproportionate cost impact on any law abiding sector of the industry. Therefore, the regulation should not affect the structure of competition in the sectors affected (i.e. the road freight and inter-urban passenger transport sectors). Moreover, the effective enforcement of drivers hours regulations will enhance the operation of the market by ensuring there is a level playing field that prevents law-abiding firms suffering from unfair competition from firms or drivers working excessive hours.

8. Enforcement, sanctions and monitoring

8.1. The new Regulations relate directly to enforcement and sanctions, they do not introduce new drivers hours rules' that need to be enforced. The Department maintains close contacts with enforcement agencies who keep it informed of the effectiveness of the enforcement regime. Indeed the legislative changes described here have been requested by enforcement agencies to address real or predicted problems with the current regime and anticipated requirements following the introduction of digital tachographs.

8.2 Existing enforcement activity takes the form of roadside checks and compliance audits at operators' premises (which will continue after the introduction of these regulations). Both these activities are targeted on operators considered to pose the greatest risk to road safety. The Government will review the revised enforcement regime, particularly after the introduction of digital tachographs, to assess its effectiveness (see section 10 below).

9. Implementation and delivery

9.1. The Department for Transport has developed the Regulations in partnership with DVLA and VOSA and in the wider context of enforcing the drivers' hours rules and preparing for the introduction of digital tachographs.

9.2 DVLA's role will be to supply tachograph cards to persons entitled to such cards. They have already made regulations to enable them to charge a fee for this service (the Passenger and Goods Vehicles (Recording Equipment)(Tachograph Card Fees) Regulations 2005 (SI 2005/1140) and can now issue cards.

9.3 VOSA's role is to enforce the rules. In parallel with the introduction of digital tachographs, they plan to use new roadside enforcement devices which will enable them to carry out checks more effectively. These devices will enable enforcement officers to download and read data from both digital tachographs and tachograph smart cards, analyse the information and compare with other records such as analogue tachograph record sheets, copy and store digital data securely for evidential purposes and will provide a mobile link to databases containing relevant information such as whether a particular driver card has been reported as lost or stolen. They are also developing training plans for their staff covering the changes to the law (both European and domestic) and the new technology that they will need to use. VOSA have also taken lead responsibility for keeping the industry informed of relevant developments. These plans are all related to the introduction of digital tachographs generally, rather than to these regulations which only form a small part of the overall preparations for digital tachographs.

10. Post-implementation review

10.1 The Department will review the effectiveness of its enforcement regime in the light of practical experience following the introduction of digital tachographs. During the review, the Government will consider the current levels of compliance with the relevant rules (as revealed during random checks) and stakeholders' experience of how well the regime is working in practice.

11. Summary and recommendation

11.1 The Government recommends the introduction of these measures in order to maintain an effective, proportionate and dissuasive enforcement regime for existing drivers' hours rules. The Government has not identified significant additional costs either for law-abiding companies or for the Government itself, nor any other disbenefits. On the contrary, the Government's assessment is that, overall, benefits are likely to be positive for both public safety and for business.

Summary costs and benefits table

Option	Total benefit per annum: economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	Nil	Unquantifiable - but would expect to lead to an increase in road accidents and open up the UK Government to the risk of infraction proceedings
2	Improvements in road safety and less unfair competition for law abiding companies	De Minimis

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 9th July 2005

Dr Stephen Ladyman

Minister of State for Transport
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Annex A

Related legislation:

- a) EEC Regulation No 3820/85 (commonly known as the 'EU drivers hours rules'),
- b) EEC Regulation No 3821/85 (commonly known as the 'tachograph rules'),
- c) EC Regulation 2135/98 (which provided for the introduction of digital tachographs),
- d) EEC Directive 88/599 (which places duties on Member States relating to checks on compliance with EEC Regulations 3820/85 and 3821/85),
- e) Part 6 of the Transport Act 1968 (provisions related to Drivers' Hours),
- f) Regulation 4 of the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979 (SI 1979/1746), as amended. This Regulation relates to the persons and bodies authorised to install, calibrate and repair tachographs, and
- g) The Passenger and Goods Vehicle (Recording Equipment)(Tachograph Card Fees) Regulations 2005.

*News Release 2005/0033:
23 March 2005*

INTRODUCTION OF DIGITAL TACHOGRAPHS

Transport Minister David Jamieson confirmed today that the Government would have arrangements in place to support the use of digital tachographs in Great Britain from the beginning of August 2005.

Ongoing uncertainty about EU mandated implementation dates has made it extremely difficult for industry to plan for the introduction of this new technology.

Mr Jamieson said:

"We recognise that continued uncertainty about the introduction of digital tachographs has created considerable difficulties for the transport industry. The European Parliament is still debating implementation dates and it remains unclear when the first vehicles equipped with digital tachographs will be available.

"We want to provide what clarity we can for all concerned, especially those who are most affected by the uncertainty, such as transport operators and vehicle manufacturers. I hope that our commitment to facilitate the use of digital tachographs from August onwards will provide industry with a basis to make informed business decisions.

"Looking to the longer term, we maintain our position that we will not enforce the mandatory fitting of digital tachographs until it is clear that any such requirement can be met

"We will continue to work closely with stakeholders to ensure a smooth, pragmatic and cost effective transition to digital tachographs"

Notes to editors

1. Tachographs are devices, fitted to certain commercial vehicles, which are used to record drivers' activities, notably driving time. Digital tachographs will record drivers' activities electronically and store them in digital memory rather than on paper. These records will be used to enforce European drivers' hours rules (EU Regulation 3820/85). The drivers' hours rules limit the length of time for which many commercial drivers can drive (and require them to observe minimum rest and break periods).

2. EU Regulation 2135/98 mandated the introduction of digital tachographs and required that all relevant vehicles brought into service after 5th August 2004 should be so equipped. However, digital tachographs were not available by that date. This has led to considerable uncertainty about implementation dates.

3. The European Commission decided not to propose a change to the dates in the legislation. However, the Transport Council inserted a clause into another piece of legislation that would change the implementation date to August 2005

4. When the Transport Council set this date, in June 2004, it reflected the then anticipated availability of digital tachographs. However, production digital tachographs are still not available. In fact, based on discussions with industry, the Department's current view is that August 2005 is probably the earliest date from which significant numbers of digital tachograph equipped vehicles could begin to be placed on the market. However, the Department currently considers it implausible that every new vehicle could reasonably be digital tachograph equipped from this date.

5. The legislation containing the proposed amendments to the dates is currently with the European Parliament for a second reading (which is scheduled for mid April). At this stage, it is not clear when this legislation might be formally adopted and this, in turn, has compounded the uncertainty about digital tachograph implementation dates.

6. Today's announcement is intended to help cut through that uncertainty by confirming that arrangements allowing the use of digital tachograph-equipped vehicles will be in place in Great Britain in time for the expected introduction of such vehicles. These arrangements can be summarised as follows:

- the production and sale of drivers cards. Statutory Regulations providing for this are being finalised and the Driver and Vehicle Licensing Agency (DVLA) hope to be able to start issuing drivers' cards before August, and,
- authorisation of the workshops (and fitters) necessary to calibrate and activate digital tachographs. This will be arranged by the Vehicle and Operator Services Agency (VOSA) who are working closely with vehicle and tachograph manufacturers to ensure that sufficient workshops (and fitters) are authorised before August.

7. In addition, revised enforcement powers will be needed to reflect the use of digital tachographs. These are being prepared by DfT.

8. Similar arrangements providing for the use of digital tachographs in Northern Ireland will be made shortly.

9. At this stage, and given the ongoing uncertainty about implementation dates mandated by Europe, the Government does not intend to set a date for enforcing the mandatory fitting of digital tachographs into new vehicles. This is being kept under close review, but the Government does not intend to enforce a mandatory fitting date that is not realistic.

10. The drivers hours rules (and, therefore, the use of tachographs) are enforced in Great Britain by VOSA and by the Police - primarily through roadside checks.

11. Further information on digital tachographs can be found on the [DfT Website](#)

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Annex C

Current prescribed levels for fines

Fine	Maximum Sum
Level 1 fine	£ 200
Level 2 fine	£ 500
Level 3 fine	£1,000
Level 4 fine	£2,500
Statutory Maximum/Level 5	£5,000

Please note that following the recommendations of Patrick Carter, the Government proposes to introduce new 'day fines' scheme. This will provide a statutory methodology for calculating the amount of the fine which is more transparent and provides greater consistency and fairness. These new measures will provide a means to link the amount of the fine more closely to the offender's ability to pay. Under the proposals, the maximum sum payable would be increased as follows:

Level 1: £750
Level 2: £1,500
Level 3: £3,000
Level 4: £7,500
Level 5/Statutory maximum: £15,000

This increase is not intended to increase the level of fines imposed generally but to provide the potential for higher fines in those cases where the offender has the means to pay.