

EXPLANATORY MEMORANDUM TO
THE PASSENGER AND GOODS VEHICLE (RECORDING EQUIPMENT)
(FITTING DATE) REGULATION 2006

2006 No. 1117

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 These Regulations amend the definition of ‘the relevant Annexes’ in section 97 of the Transport Act 1968. This has the effect that relevant vehicles first put into service on or after the date specified in the definition must be fitted with recording equipment which complies with Annexes 1B and II to the Community Recording Equipment Regulation as defined in section 97 (i.e. Council Regulation (EEC) 3821/85 as amended). Such equipment is commonly known as a digital tachograph and it records driver and vehicle activity to ensure compliance with drivers’ hours rules. The vehicles affected are most heavy goods vehicles and some coaches.

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

- 3.1 The Department for Transport has been unable to lay this Instrument in time to comply with the 21 day rule, because the precise mandatory fitment date was not fixed until publication in the Official Journal of Regulation (EC) No.561/2006 which set the date at 20 days after publication. This Instrument was made as soon as reasonably possible after the date had been set.
- 3.2 Originally, Council Regulation (EC) 2135/98 required the fitting of digital tachographs into vehicles first brought into service 24 months after publication of the technical annex, Annex 1B which was given effect by Commission Regulation (EC) 1360/2002. Annex 1B was published and came into force on 5 August 2002. Therefore, the original mandatory fitment date was 5 August 2004. However, by that date there were no type approved digital tachographs available on the European market.

- 3.3 Under Article 3 of the same Regulation, the Commission was required to submit a proposal to the Council for an extension to the deadline; but the Commission decided it would be simpler for all concerned to issue a moratorium extending the deadline to August 2005. Continuing problems meant that the Commission extended the moratorium again, until 31 December 2005.
- 3.4 Following pressure from industry (tachograph manufacturers, vehicle manufacturers, trade associations and operators) to provide legal certainty on the required fitment date, provision was included in the new Regulation on drivers' hours (Regulation (EC) No. 561/2006). Both the European Parliament and the Transport Council accepted that fitment should become mandatory 20 days after publication of this Regulation.

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 driving.
- 4.3 Existing tachographs, which conform to Annex I to Regulation 3821/85, create paper record sheets. In 1998, the EU adopted Regulation 2135/98, which amended 3821/85. This paved the way for the introduction of digital tachographs, conforming to the new Annex IB. These will store records of driver activities in digital memory rather than on paper. They are used in conjunction with various 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).
- 4.4 Enforcement provisions for drivers' hours are contained in Part VI of the Transport Act 1968, which was amended by the Passenger and Goods Vehicles (Recording Equipment) Regulations 2005 (SI 2005/1904) - "the 2005 Regulations" - to cater for digital tachographs as well as analogue tachographs, in time for the introduction of digital tachographs by industry and the anticipated end of the moratorium in August 2005 (paragraph 3.3 above).

- 4.5 The 2005 Regulations did not specify a date for the mandatory fitment of digital tachographs as that was still being considered by the Commission; but now that that date is fixed, the further amendment is needed to ensure the mandatory requirement that new vehicles are all fitted can be enforced.

5. Extent

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

6. European Convention of Human Rights

- 6.1 Dr Stephen Ladyman, Minister of State for Transport, has made the following statement regarding Human Rights:
- 6.2 In my view the provisions of the Community Drivers' Hours and Recording Equipment Regulations are compatible with the Convention Rights.

7. Policy Background

- 7.1 European Regulation requires the fitting of digital tachographs into vehicles first coming into service after a specified date. This date has been amended through agreement with the European Parliament and Council of Ministers.
- 7.2 Enforcement of the tachograph requirements rests with Member States. In Great Britain, Part VI of the Transport Act 1968 as amended by the 2005 Regulations contains provisions for enforcement in relation to both existing analogue tachographs and the new digital tachographs. In particular it is an offence under section 97 to use a vehicle, which is required to be fitted with a tachograph, without one. As a result of the amended definition in these new Regulations, it will be an offence to use a new vehicle, in which a tachograph is required, unless it is fitted with a digital tachograph. This meets the policy aim of providing the necessary legal certainty for the mandatory fitment of digital tachographs.
- 7.3 There is no requirement for compulsory retro-fitting of digital tachographs to existing vehicles fitted with analogue tachographs, but their voluntary fitment remains an option for transport operators.
- 7.4 The industry has been aware since December 2005 of the expected date for the introduction of digital tachographs, so that, although there is only short notice of the precise date that is not expected to put industry at a significant disadvantage.

7.5 Nevertheless, GB has been able to support the voluntary use of digital tachographs since August 2005. In addition, vehicle manufacturers were able to give their customers the option, from August last year, about whether they wished to have an analogue tachograph or a digital one installed, and since February 2006, vehicle manufacturers have begun fitting digital tachographs as standard, in full expectation of a new mandatory fitment date being imminent. The use of either type of tachograph in vehicles first used before the specified date remains lawful.

8. Impact

- 8.1 The requirement to fit and use digital tachographs with effect from 1st May 2006 comes from the new, directly applicable, EU Regulation on drivers' hours (e.g. see section 3.4 above), not from this instrument. In practice, this instrument simply makes it clear that it will be an offence to use a new, in-scope, vehicle put into service for the first time from 1st May 2006, unless it is fitted with a digital tachograph.
- 8.2 No new Regulatory Impact Assessment (RIA) has been prepared for this instrument because it will not, in itself, introduce any new requirements (and the instrument should therefore have minimal direct impact on business, charities or voluntary bodies, so long as they comply with the requirements of the directly applicable EU legislation). However;
- The Department for Transport's Supplementary Explanatory Memorandum (EM) 12173/95 and accompanying Compliance Cost Assessment to the Parliamentary Scrutiny Committees regarding EU Regulation 2135/98 on recording equipment in road transport considered the impact of digital tachographs (including the then mandatory fitting date for digital tachographs).
 - Ministerial letters to the Scrutiny Committees dated 15 July 2004 and 9 June 2005 on the new EU Regulation on drivers' hours and accompanying enforcement Directive, together with the Department's EM 3671/05 presenting the joint text which was approved on 6 December 2005 by the Conciliation Committee of the European Parliament and of the Transport Council on these dossiers, provided additional information on new mandatory fitting dates.
 - in order to be able to use digital tachographs, drivers and operators require "smart" cards. The impact of this requirement was considered in the RIA for the *Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card Fees) Regulations 2005* (SI 2005/1140),
 - it was necessary to amend existing procedures for the enforcement of the EU drivers' hours rules in this country in order to facilitate the use of digital tachographs. The impact of this requirement was considered in the RIA for the *Passenger and Goods Vehicle (Recording Equipment) Regulations 2005* (SI 2005/1904),

- discussions with both vehicle and tachograph manufacturers indicate that the cost for operators of buying new vehicles equipped with digital tachographs should be comparable to buying a new vehicle fitted with the earlier generation of tachographs, and,
- the Department expects to seek industry views on further digital tachograph related secondary legislation later this year (primarily concerning the downloading of digital tachograph data and the potential misuse of digital tachograph smart cards). As part of this exercise, the Department will also take the opportunity to seek industry views on a consolidated RIA considering the overall impact in this country of the pan-EU requirement to fit digital tachographs. This will, amongst other things, bring together the earlier RIAs referred to above and update them in the light of practical experience.

8.3 The impact on the public sector should be minimal. The Vehicle and Operator Services Agency and the Police are the main public bodies affected as they are responsible for enforcing the EU Drivers' Hours Rules. The instrument should have negligible impact on them as they already enforce the rules.

9. Contact

9.1 **Mark Bosly** at the Department for Transport, Zone 2/25, Great Minster House, 76 Marsham Street, London. Tel: 020 7944 2757, or e-mail: mark.bosly@dft.gsi.gov.uk, can answer any queries regarding this Instrument.