

EXPLANATORY MEMORANDUM TO

THE HEAVY GOODS VEHICLES (CHARGING FOR THE USE OF CERTAIN INFRASTRUCTURE ON THE TRANS-EUROPEAN ROAD NETWORK) (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. 1352

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The objective of this Statutory Instrument (SI) is to ensure that the Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) Regulations 2009 (the 2009 Regulations) continue to work as before after European Union exit day, for example by removing redundant references to the European Commission, removing requirements which involve the European Union and are no longer appropriate, and converting the maximum amounts for HGV time-based road charges and certain limits on HGV distance-based road charges from euros into pounds.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The 2009 Regulations, which transposed Directive 1999/62/EC, do not mandate HGV road charging, but set rules for such tolls and charges where they exist, for example by prescribing the type of charging that can be used, and the maximum charge or toll levels.

Why is it being changed?

- 2.3 The objective of the SI is to ensure that the 2009 Regulations continue to work as before, addressing various technical deficiencies that would otherwise arise as a result of the UK leaving the EU.

What will it now do?

- 2.4 The 2009 Regulations, as amended by this SI, will continue to function as before, in that they will set rules for HGV road tolls and charges in the UK. The amendments made by this SI will remove obligations on the government to report to the European Commission, and to seek the views of the European Commission, which would not be appropriate outside of the EU. It will also convert various maximum amounts for HGV tolls and charges from euros into pounds. The SI also removes a redundant reference to Directive 1999/62/EC (the 1999 Directive) in the County of Merseyside Act 1980.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The SI was presented for consideration to the Sifting Committees on 30th October. At its meeting on 13th November the Committee scrutinized the proposal and agreed that the SI should remain as a negative procedure.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for the Department for Transport, Jesse Norman MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Heavy Goods Vehicles (Charging For The Use Of Certain Infrastructure On The Trans-European Road Network) (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention Rights.”

6. Legislative Context

- 6.1 The 2009 Regulations transposed the 1999 Directive. The 2009 Regulations were amended by the Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) (Amendment) Regulations 2014, which transposed amendments to the 1999 Directive contained in Directive 2011/76/EU.
- 6.2 The 2009 Regulations, as amended, do not mandate HGV road tolls or charges, but set rules where such tolls or charges exist. They relate to tolls and charges on strategic roads, setting rules for the form of such tolls and charges, the maximum levels, and rules on the administration of these tolls and charges.
- 6.3 The SI is being introduced under powers contained in the European Union (Withdrawal) Act 2018 (the Withdrawal Act) to ensure that the 2009 Regulations continue to function appropriately once the UK leaves the EU, removing deficiencies that would otherwise arise as a result of EU exit.

7. Policy background

What is being done and why?

- 7.1 The specific deficiencies arising from EU exit that the SI corrects are set out below.
- 7.2 The SI removes from the 2009 Regulations a number of references that will no longer be appropriate, including to the European Commission and the EEA. This includes requirements to inform, report to or seek permission from the European Commission, for example to grant an HGV a reduction or exemption from a toll or user charge

because it only travels occasionally on public roads and is used by persons whose main occupation is not the carriage of goods.

- 7.3 The SI also removes a requirement that any discount or reduction in the amount of an infrastructure charge levied on an HGV must comply with the Treaty on the Functioning of the EU, particularly Articles 18 (discrimination), 56 (freedom to provide services), 106 (fair competition) and 107 (state aid) thereof. Under the Withdrawal Act the Treaty will cease to have direct effect in UK law on exit day, subject to certain rights thereunder (including those specified) which will be recognised and available in domestic law after exit day.
- 7.4 At present, various maximum amounts for HGV time-based charges, and environmental external-cost components of distance-based charges (tolls) are set in euros, since the 2009 Regulations refer directly to amounts contained in tables in the 2009 Directive. The SI provides that these tables should be read, for its purposes, as if they were those set out therein, with amounts converted to pounds. The European Commission has powers to uprate the maximum amounts set in the 2009 Directive according to an inflation formula every two years, and the 2009 Regulations are written to take account of the increased values. The Withdrawal Act prevents references to European Directives being updated in this way after EU exit, meaning that the maximum values will no longer be increased by inflation, but frozen at the current levels. In practice, this will have a very limited impact. For example it would normally be primary legislation that introduced or increased tolls or charges, so if such changes were made in the future, the primary legislation could also increase the maximum rates appropriately in the 2009 Regulations.
- 7.5 The SI also removes a redundant reference to the 1999 Directive contained in the County of Merseyside Act 1980.
- 7.6 Road charging is a devolved issue, however when the 1999 Directive was previously transposed into UK regulations, the Devolved Administrations (DAs) were content for the UK government to do so on their behalf. The SI also makes changes to fix deficiencies for the whole of the UK. In practice none of the DAs has any road charging, or any policy to introduce such road charging.
- 7.7 Failure to proceed with this legislation would have a small number of minor impacts as highlighted earlier.
- 7.8 This instrument applies to road charging which are a transferred matter for Northern Ireland under section 4 to the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where the Government wants Ministers in the Northern Ireland Executive to take the necessary actions to prepare Northern Ireland for exit day. The Government has been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day in the absence of a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the powers in section 8 of the Withdrawal Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of the Withdrawal Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There are no plans to produce a consolidated version of the 2009 Regulations.

10. Consultation outcome

10.1 No consultation was undertaken as there are no expected significant impacts or cost on UK businesses. There were discussions on the drafting of the SI with DAs.

11. Guidance

11.1 No formal guidance is necessary.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there are no significant impacts or costs on UK businesses.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses but there are not expected to be significant impacts or cost on small businesses.

14. Monitoring & review

14.1 As this instrument is made under the Withdrawal Act, no review clause is required.

15. Contact

15.1 Tony Cunningham at the Department for Transport Telephone: 07747 694 553 or email: tony.cunningham@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Philip Andrews Deputy Director for RIS Futures team at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jesse Norman MP, Parliamentary Under Secretary of State for the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State for the Department for Transport, Jesse Norman MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because the fixes to deficiencies are minor and technical, there are no expected significant impacts or cost on UK businesses, and none of the conditions in Schedule 7, paragraph 1(2) apply.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State for the Department for Transport, Jesse Norman MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate”.

This is the case because, as explained in section 7, the SI does no more make minor technical changes, such as removing redundant references to the European Commission, removing requirements which involve the EU and are no longer appropriate, and converting the maximum amounts for HGV time-based road charges and certain limits on HGV distance-based road charges from euros into pounds.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State for the Department for Transport, Jesse Norman MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 These are that, without this instrument, there would be inappropriate references to the European Union in UK law, including the requirement to obtain permission from the European Commission to implement road tolls.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State for the Department for Transport, Jesse Norman MP has made the following statement:

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

- 4.2 The Parliamentary Under Secretary of State for the Department for Transport, Jesse Norman MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Jesse Norman MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.